Supreme Court, U. S.
FILED
JUL 2 1976
MICHAEL RODAK, JR., CLERK

**APPENDIX**

# In the Supreme Court of the United States

OCTOBER TERM, 1975

**No. 75-1267**

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BAYSIDE ENTERPRISES, INC.,
PENOBSCOT POULTRY COMPANY,
AND POULTRY PROCESSING, INC.,
PETITIONERS,

*v.*

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIRST CIRCUIT

---

**PETITION FOR CERTIORARI FILED MARCH 8, 1976**
**CERTIORARI GRANTED MAY 19, 1976**

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
Washington, D.C.

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Case No. 1-CA-9721

BAYSIDE ENTERPRISES, INC.
PENOBSCOT POULTRY COMPANY
POULTRY PROCESSING, INC.
and
TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 340 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

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## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| | |
|---|---|
| 3.26.74 | Charge filed. |
| 5. 3.74 | Amended Charge filed. |
| 5. 7.74 | Complaint and Notice of Hearing, dated. |
| 5.14.74 | Answer of Respondents, dated. |
| 6.20.74 | Amendment to Complaint, dated. |
| 6.21.74 | Amended Answer to Complaint and Amended Complaint dated. |
| 6.26.74 | Hearing opened. |
| 6.27.74 | Hearing closed. |
| 9.24.74 | Administrative Law Judge's Decision issued. |
| 10.15.74 | Respondents' exceptions to the Administrative Law Judge's Decision and Request for oral argument, received. |
| 2. 5.75 | Board's Decision and Order, dated. |

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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Case No. 75-1070

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,
*v.*
BAYSIDE ENTERPRISES, INC.,
PENOBSCOT POULTRY COMPANY, and
POULTRY PROCESSING, INC.,
RESPONDENTS.

---

NO. BELOW: 1-CA-9721
DATE OF JUDGMENT: February 5, 1975
NOTICE OF APPEAL FILED: [Application for Enforcement]

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## DOCKET ENTRIES

*1975*

Feb. 27 Application for enforcement filed.
Mar. 3 Appearance of Alan Levenson for respondents filed.
4 Petition to transfer filed by respondents.
6 Appearance of Eliott Moore filed for petitioner.
11 Order (Coffin, Ch.J.) transferring case to Fifth Circuit upon motion of petitioner. Notices mailed. File transferred to the Fifth Circuit along with certified copy of docket entries.
19 Opposition of petition filed as a motion for reconsideration. Order (Coffin, Ch.J.) setting aside order of March 11, 1975. Notices mailed. File returned from Fifth Circuit.
25 Order (Coffin, Ch.J., McEntee and Campbell, JJ.) reinstating order of March 11, 1975 and transferring case to Fifth Circuit. Opinion of the Court per curiam. Notices mailed. File transferred to the Fifth Circuit along with certified copy of docket entries.



*1975*

June 4 Record on transfer from Fifth Circuit filed and case reactivated.
9 Certified list filed.
July 9 Motion filed. Order (Coffin, Ch.J.) enlarging time for filing brief for petitioner and appendix to and including August 13, 1975. Notices mailed.
16 Appendix to briefs filed.
17 Certified record and two reproduced copies of transcript of testimony filed.
Aug. 11 Motion filed. Order (Coffin, Ch.J.) enlarging time for filing brief for petitioner to and including August 20, 1975. Notices mailed.
20 Brief for petitioner filed.
22 Certified copies of two pamphlets of U.S. Dept. of Agriculture filed.
Sept. 4 Motion filed. Order (Coffin, Ch.J.) enlarging time for filing brief for respondents to Sept. 25, 1975, and directing that case remain on October list. Notices mailed.
25 Brief for respondent filed.
29 Assigned for hearing at the October, 1975 session.
Oct. 7 Heard by Coffin, McEntee & Campbell, J.J.
8 Appearance of Robert A. Giannasi, filed for petitioner.
Dec. 10 Decree: The orders of the National Labor Relations Board are hereby affirmed and enforced. Opinion of the court by Coffin, Ch.J. Notices mailed.
22 Verified bill of costs filed.

*1976*

Jan. 6 Taxation of costs entered. Notices mailed.
Mar. 12 Notice of filing petition for certiorari 3/8/76 (75-1267).
June 1 Order of Supreme Court allowing certiorari 5/19/76.

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

[1] BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

---

Case No. 1-CA 9721
In the Matter of:
BAYSIDE ENTERPRISES, INC.
PENOBSCOT POULTRY COMPANY
POULTRY PROCESSING, INC.
and
TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 340 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

---

District Courthouse
Congress Street
Belfast, Maine
Wednesday, June 26, 1974

The above-entitled matter came on for hearing, pursuant to Notice, at 10:00 o'clock a.m.

BEFORE:

DAVID S. DAVIDSON, Administrative Law Judge

APPEARANCES:

| | |
|---|---|
| S. ANTHONY DICIERO, Esq. | National Labor Relations Board, Region 1, 15 New Chardon Street, Boston, Mass., appearing as Counsel for the General Counsel. |
| DAVID COHEN, Esq., | Law firm of Preti & Flaherty, 443 Congress Street, Portland, Maine, appearing for the Charging Party. |



[2] ALAN LEVENSON, Esq., Law firm of Levenson and Levenson, 187 Middle Street, Portland, Maine, appearing on behalf of the Respondent.

• • •

[18] CARL FENWICK

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

Q. (By Mr. diCiero) Mr. Fenwick, would you state your full name and address for the record, please? A. Carl Fenwick, R.F.D. 1, Oakland, Maine.

Q. Are you familiar in any way with Fort Halifax Packing Company? A. Yes, I am.

Q. What is your capacity there?

• • •

[19] Q. Just briefly tell us what is Fort Halifax Packing Company, Mr. Frenwick? A. It's a poultry processing company. It is involved in raising and processing poultry in the State of Maine.

Q. And does Fort Halifax Packing Company have a feed mill operation? A. No, it does not.

• • •

Q. (By Mr. diCiero) Withdraw that question. Does Fort Halifax Packing Company have chickens that are raised by independent farmers around the State of Maine? A. Yes, they do.

Q. Is Fort Halifax Packing Company obligated to supply feed to those chickens. A. Yes.

Q. You have no feed mill operations? A. No, we don't.

Q. From whom does Fort Halifax Packing Company get

its feed? A. We purchase our broiler feed from Penobscot Feeds.

[20] Q. Do you know where that is located? A. Thorndike.

Q. Who delivers the feed? A.We have a contract hauler. His name is Richard Hodges.

Q. And where is he from? A. Unity, I believe.

Q. Unity, Maine? A. Yes.

Q. Tell us what that operation involves. A. He picks up feed at the mill in Thorndike and delivers it to our farms throughout the area where we raise birds.

Q. Have you checked your records, and the records that are with you today, can you tell us how many pounds of feed Fort Halifax Packing Company has purchased from the period January 1, '73 through today? A. Yes, I can. The amount purchased from January 1, '73 through I think it's June 13 of this year is 120,000,000, slightly in excess of that figure, 120.9 million pounds—I believe.

Q. Do you know what the total value in dollars was that? A. Yes, that's about $9.9 million dollars.

Q. And what percentage is that of the total feed requirements for Fort Halifax Packing Company? A. At the present time it's 100% of our broiler feed requirements. We did have another source of feed, but I don't believe we're using it presently. So I believe at the [21] present time its 100% of the broiler feed.

Q. You get from Penobscot Feed in Thorndike, Maine? A. That's correct.

Q. Is there also something Fort Halifax Packing Company sells to the Thorndike mill? A. Yes, it's a by product of our poultry operation, offal and feathers.

• • •

[22] Q. Does Fort Halifax Packing Company have anything to do other than as you have described, with Mr. Hodge, the contract hauler? Is that an independent operation? A. Yes, sir, it is.



Q. It's not a part of your company at all? A. No, it isn't.

• • •

[26] *Redirect Examination*

Q. (By Mr. DiCiero) Mr. Fenwick, you were talking on cross-examination and you mentioned a farm company and a processing company. Fort Halifax Packing Company, is that the parent corporation? I'm confused—do you have different corporate names? A. We have two corporate entities.

Q. What are they? A. Fort Halifax Packing Company is the processing plant, and we have Fort Halifax Poultry Company, which is the grower or the farm operation, the operation on which we raise the birds on a contract basis.

Q. Are these two corporations, are they owned by the same group? A. The poultry company is a subsidiary, a wholly owned subsidiary of the packing company.

Q. So when you say that they sell birds to the processing [27] company, there is actually a contract and they actually pass money back and forth? A. We do write a check for it, yes, sir.

Q. Is it part of your bookkeeping operations? A. Yes.

• • •

Judge Davidson: Do you know if there is separate management or common management?

The Witness: Common management.

• • •

[29] HERBERT HUTCHINS

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

Q. (By Mr. Levenson) Mr. Hutchins, you are employed by whom? A. Bayside Enterprises.

* * *

[30] Your office is where? A. 153 High Street.

Q. Could you tell us briefly, or not briefly, what Bayside Enterprises is and what it does and all of the preparations? A. Bayside Enterprises is a corporation that grows meat poultry—broilers, roasters, capons and produces hatching eggs from breeder flocks for production of the meat breeders. To accomplish this, we operate a pedigree breeding operation which is a grandparent operation and its basic function is to select or breed lines of birds; they may be cross-mated to produce the parents that produce the eggs, broilers and roasters. With this function, they produce breeding stock for themselves and they produce hatching eggs for themselves, as well as buying hatching eggs from other people when we don't have enough.

Some of the production of this unit is sold to other poultry companies, either breeding stock or hatching eggs. After the eggs are laid or produced on the farm, they are collected and moved to one of two hatcheries, either the pedigreed breeding hatchery or a commercial hatchery, which would produce the meat type chicks, broilers or roasters.

The hatchery hatches these and moves them to growing farms. We have somewhere around 139 farms that we function with. A portion of these are company owned operations. From here the birds are grown and fed feed that we purchase [31] from Penobscot Feeds, or some other location. We also buy feeds from other companies.

These birds are grown and they are sold to Poultry Processing or some other persons. We sold some to the person who was here this morning. We sold some in Canada.

* * *

[32] Q. Would you clear up this question for us about who is who here—Penobscot Poultry and Poultry Processing? A. Poultry Processing Incorporated is a corporate



structure that operates the processing plant and its procurement system, which means the trucking operation at this plant and out from the plant. And it has related operations like a garage that just functions as a supplement to Poultry Processing.

The poultry is sold as Penobscot brand poultry and it operates and does business as Penobscot Poultry Company.

Q. But who is it really? A. It's Poultry Processing, Incorporated.

* * *

Q. And what about this Penobscot Feed? A. Penobscot Feeds is a feed milling operation that produces feed for sale to Fort Halifax Poultry Company and for sale to Bayside Enterprises.

Q. My question is, who is Penobscot Feeds? Is that a trade name? A. Penobscot Feeds is a trade name; it's Poultry Processing.

Q. So is it a fair statement to say Poultry Processing is both [33] Penobscot Feeds and Penobscot Poultry Company? A. Yes.

* * *

Q. We'll let that pass.

You have spoken about the fact that you sold live poultry, as a matter of fact, that's all you sell is live poultry? A. Yes.

Q. When and where does title pass? A. The live poultry?

Q. Yes. A. Live poultry is sold to Poultry Processing or, in tonight's case, to Fort Halifax Packing Company, at the growing farm. And it's loaded on trucks at that point. The volume of the trade is determined when it's weighed on the scale, either in Belfast or in an agreeable location. That's when title passes.

Q. But in any event, Poultry Processing picks up the poultry at the farms of Bayside, is that right? A. Yes.

Q. And the same with these other processing plants? [34] A. What do you mean?

Q. Well, how do these other processing plants get their live poultry? A. The processing plants pick the poultry up on the farms, I believe.

Q. You said that the operation consists of two hatcheries? A. Yes.

Q. One hatchery for pure bred? A. It's a pedigreed, grandparent type operation.

Q. Pedigreed birds and what is the other? A. It produces meat-type chicks, broiler hatchery, breeder.

Q. Could you just give me a little detail about what happens on these particular hatcheries? A. The breeder hatchery serves as a part of a primary or base breeding operation, and its function is connected with four or five primary breeding farms which breed and select strains or lines of birds. It could be that we're breeding four strains of birds, two on a male side and two on a female side, so that you will produce four lines of birds to be mated with each other to come out in the end with what we would call a strain cross breeder.

A strained cross breeder is a type of breeder that is used in the broiler or roaster production business. The function of the grandparent operation with the primary farms, the pedigree farms and the hatchery are to produce parent [35] lines for the broiler and roaster operations.

Q. To do this, don't you have to have somebody who is an expert? A. Yes, we have a geneticist, Mr. Richard Coscoe, and he has people that work for him that manage the farms, plus a fellow that helps with the selection work.

Q. Selection of what? A. Selection of the basic breeders and the traits they would like to select.

Q. So Mr. Coscoe works out which types of strains to produce, is that a fair statement? A. He controls the



genetic composition of the strains through his selection program and computer program and mathematical work.

* * *

A. The pedigree primary breeder operation was established probably in 1948 by buying eggs or chicks of strains from other breeders. Since this time its been basically a closed operation where the selection has gone on within these strains and the genetic rearrangement has gone on within these [36] strains. At times, you might buy an outside breeding stock to try to select or extract certain genes out of the other strains and inject them into your own. But basically it's a straight closed strain breeding operation and you get genetic rearrangements through your selection.

Q. What about the other one? A. The commercial hatchery?

Q. Yes. A. Its only function is to take in eggs and hatch chicks.

Q. And they get the eggs from where? A. They get the eggs from what we would call commercial breeder farms or broiler breeder farms or roaster breeder farms, or they might purchase the eggs from someone else. At times we've purchased eggs from the gentleman who was here before.

Q. So you have breeder farms producing eggs? A. Yes.

Q. Would you tell us a little bit about those? You said you've got 137— A. That includes the total farm operation, I believe. I believe we're involved with 17 egg producing operation, 6 of which are part of the operation we just discussed and 11 produce eggs from breeding stock that we have purchased from someone else or gotten from our pedigree operation.

Q. So of the 136 farms you have 12 commercial breeders and [37] 5 pedigree? A. Five or six, yes.

Q. Five or six pedigree breeding farms. That will make approximately 119 farms. What goes on there? A. These

produce or grow broilers and roasters for Bayside Enterprises.

Q. What type arrangement do you have with these farms? A. We have a growing agreement with the owners of the firm which basically pays them for use of the facility, services rendered.

Q. Mr. Hutchins, I show you this exhibit marked for the purposes of identification, Respondent's Exhibit 1, and ask if you can identify it?

(The document above-referred to was marked Respondent's Exhibit No. 1 for identification.)

A. Yes, this is a Bayside Enterprises broiler-roaster and capon production contract for agreement.

• • •

*Voir Dire*

Q. (By Mr. diCiero) Mr. Hutchins, is this a complete contract? [38] A. Yes. The only thing that would be in addition to this with the growers would be a specification sheet and a management directive on how the birds should be handled.

Q. And how about schedules for costs and so forth, isn't that usually a part of that? A. I guess I don't understand what you mean.

• • •

[39] Q. I'm saying a schedule of how it's supposed to be paid? A. You mean an explanatory type thing?

Q. That is correct, sir, yes. A. An example of how a calculation would be made?

Q. Yes. A. It might or might not be attached. It's not usually attached, no.

• • •



*Direct Examination (Resumed)*

• • •

[40] The contract states that medicaments or medicine—what type of service, how does that actually work on the farms? A. Bayside employs a broiler-roaster production manager who has under his direction three or four field supervisors which call periodically on these farms on a routine basis or on a basis as the grower feels that he has a problem and needs their attention. And he will observe the particular case and, if necessary, transport specimens to a diagnostic [41] laboratory and he and the diagnostician or a veterinarian would prescribe what medicament might be necessary.

Q. Is it a fair statement to say that if the flock gets sick that some action is taken on your part? A. Yes.

Q. Would you tell us about what happens and give us an example? A. If the serviceman or field supervisor recalled or the parent rehad a case of clinical cocksidiosis, which is a protozoan disease, he would recommend a therapeutic treatment for this which would be provided either through the water or through diet.

Q. Does that require a different type of feed? A. Yes, it would.

Q. On that subject, are there many different types of feed? A. Yes.

Q. Would you tell us about that? A. Feeds are basically formulated or designed nutritionally to fit the type of bird in age that is being fed to, for example, let's talk about broilers. Feed is given to broilers, a feed from zero to two weeks of age. Another feed from two to five or six weeks of age, a different feed from six to nine weeks of age, a feed for a period of time five days prior to slaughter which is a different feed. And then, if they weren't slaughtered, and went beyond this point, they would [42] receive

a feed until 12 or 13 weeks of age and then a feed prior to slaughter. The types of medicaments or additions of drugs to feed are controlled by the food and drug regulations.

• • •

Q. I know that there are many different ingredients. How would you classify what goes into this feed? A. There are several protein ingredients, animal protein ingredients. There are vegetable protein ingredients plus [43] basically energy sources which would be corn and yellow grease plus minerals, vitamins, amino acids, trace minerals plus a growth stimulator.

Q. Do you have occasion to change the formula for other reasons than what you just listed? A. Yes.

Q. Would you tell us what reasons you might have to change the formula? A. The formula would be changed to meet different nutrient specifications which might be determined by the strain of birds being utilized, by the age of birds being utilized, by the general health situation of the birds, by the temperature and by the availability of these ingredients or substitutes and the price.

Q. Would the weather have anything to do with whether or not you would change? A. Yes.

• • •

[44] Q. (By Mr. Levenson) Mr. Hutchins, would you explain to us [45] the set up with regard to the purchase and the milling of the grain at the Thorndike Mill for Bayside? A. Bayside Industries pays Penobscot Feed a total milling charge for mixing a specified diet. Bayside Enterprises purchases the inventory for such a formula on the basis of your own projected requirement which is based upon the number of birds and their age on the farm.

Q. So it's a fair statement to say Bayside purchases the major ingredient, which I suppose is the corn — A. Corn and soy make up on this diet 80%.



Q. And in addition what about the medicine, who purchases that? A. Bayside would purchase it.

Q. And the charges made against Bayside in favor of Poultry Processing to mill it at the Thorndike mill, is that the way it works? A. Yes.

(The document above-referred to was marked Respondent's Exhibit No. 4 for identification.)

Q. I show you this piece of paper marked for purposes of identification Respondent's Exhibit 4 and ask that you would identify it. A. This is a broiler, roaster, capon feeding schedule effective June 3, 1974 and it specifies the type of feed to be fed and the quantities of the various agents of the birds [46] listed here.

• • •

VOIR DIRE

• • •

The Witness: Bayside Enterprises feeding schedule bears the initials RLD, which is Robert L. Desrosiers, who is a broiler meat production manager for Bayside Enterprises. He decides what will be fed to these birds. He sends a copy of this [47] to HCH, which is Herbert C. Hutchins, general manager of Bayside.

He sent a copy to Richard A. Coscoe, who is the breeder department manager and geneticist for Bayside. He sent a copy of the letter to Russell Lord, who is Penobscot Feeds manager. He sent a copy to Bayside dispatcher at the feed mill.

Q. (By Mr. diCiero) Who is what? A. William Plamonden. And he sent a copy to a service man which would include four people not listed here which are broiler roaster and breeder service men.

• • •

Q. Do you know each of those names?

• • •

*Direct Examination* (Resumed)

• • •

[48] Q. It is important that a particular farm get the right crumble pellets or mash. A. Yes, very important.

Q. Why? A. It's very important when the birds are young they get a pre-starter or a starter feed which carries added fortification as far as vitamins and trace minerals and the quality of ingredients, which is the higher priced diet. And maybe a medicament if we have had a problem in the breeder hatchery over [49] the breeding starts. As the birds become progressively older, which is described on this schedule, then the form of the feed and the composition changes.

Mr. DiCiero: By "this record" I think he is referring to Respondent's Exhibit No. 4.

The Witness: These changes are described on the left, are changes in composition or formulation and nutrient density as they go down the page. It is also quite important legally that they get the right feeds because there must be a withdrawal period here where no restricted component is being fed to the birds before processing for human use.

For instance, this feed has a narcinical in it which cannot be fed within five days of processing. And, if so, the birds could be condemned.

• • •

[51] Q. Maybe it would be clearer if you could describe what happens when a driver reaches a farm? A. When he reaches a farm, he either drives or backs into the location where he is going to discharge his feed, which might be a single or multiple location, depending on where the farmer tells him to put it. And he is supposed to put his boots on and scrub his feet before he walks around the farmer's yard to hook up his equipment.

He connects the equipment and it's an air delivery unit



or he raises the boom if it's an auger delivery unit, and then engages the power to discharge the feed which takes, I don't know, maybe 2-1/2 or 3 minutes per ton.

And when he has discharged his feed, he disassembles his equipment that he had to set up, washes his boots in this material and get back in his truck and goes to another location, or back to the feed mill.

When he gets back to the feed mill presently he would be washing the running gear and his truck with a disinfecting [52] solution.

• • •

[53] Q. (By Mr. Levenson) Mr. Hutchins, you have mentioned previously that there are approximately 136 farms? A. Yes.

Q. Where are they located? A. Over 2/3 of them are in the Waldo County area, all within an average of 12 to 15 miles from the feed mill.

Q. Mr. Hutchins, how many people are employed in the processing plant, approximately? A. In Poultry Processing or in the plant itself?

Q. Poultry Processing. A. Poultry Processing has got almost — over 400.

Q. Over 400? A. Yes, I don't know the exact number.

Q. As a matter of fact, Poultry Processing is unionized, isn't it? A. Yes.

Q. By that I mean, the qualified people in the processing plant are unionized? A. Yes.

Q. How many people in Bayside Enterprises? A. Roughly 80.

Q. Would it be closer maybe to 100? A. It could be.

[54] Q. Now with regard to the processing plant, does it have a manager? A. Yes.

Q. What's his name? A. Gilbert Knight.

Q. That's a name that has previously been mentioned. And what is his function? A. His function today?

Q. Yes. A. He's a production manager at the processing plant which he supervises the foremen and through the foremen, the employees that take the feathers off the birds and remove the vicera and process the birds into a saleable form.

• • •

[58] Q. You've said that there are truck drivers on Penobscot Poultry Company, attached to it. There are drivers that deliver the grain to the farm. Are there any other truck drivers involved in Bayside. Let me put it this way — are there truck drivers attached to the hatcheries? A. The breeder hatchery, I don't believe we have a truck driver per se attached to it, no. They have a limited amount of transportation.

Q. Are there truck drivers attached to any other element? A. The broiler hatchery would have operators of two vehicles or two types of vehicles, the chick vehicle and the egg vehicle. One would be refrigerated and the other might be heated.

Q. And those designate Bayside on the side? A. Yes.

Q. Would you explain for the record the distances between these various locations? A. The processing plant is on Cross Street, which is at the east end of Belfast and offices on High Sreet, which is the other side of Belfast on the west side of Belfast, the feed plant we're discussing is in Thorndike which is probably 22 miles, more or less, to the west of here. And the hatchery is beyond this by six miles, the big hatchery. The breeder hatchery, which is Waldo, is four or five miles outside Belfast. The farms are spread all over Waldo County.

[59] Q. Turning to the people employed in Bayside Enterprises, could you give us somewhat of a breakdown as to generally who they are? Would this be of any help to you, this list? A. Yes.



Mr. DiCiero: Just a minute. What is that you just gave him?

Mr. Levenson: It's a list of the names and people at Bayside.

• • •

[60] [A.] The company owned farm managers would include Steinort, Bailey, Brewster, Hamm, Harriman, Manning, Small and Smith. Farm employees, which would work on farms or farm crews would be Betty Hamm, Shute, Ms. Smith and Mrs. Steinort. Farm crews which move poultry, grade the poultry, clean the poultry houses, company owned poultry houses and sometimes other poultry work, vaccination work and blood testing and do some of the breeder selection work include a Mr. Riley, Hustus, Gibbs, Roberts, another Hustus, another Riley, a Tibbetts and two Tripps.

• • •

[61] Mr. Levenson: At this time I would like to offer Respondent's Exhibit 5.

Judge Davidson: I receive Respondent's 5.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 5 for identification, was received in evidence.)

Q. (By Mr. Levenson) Mr. Hutchins, in your testimony about Respondent's Exhibit 5, you mentioned that there were some employees giving blood tests. What does that mean, giving blood [62] tests to who, chickens? A. Yes. And the crew, that has to do with the farm crew. Poultry is blood tested for certain transmittable diseases and these crews would be involved in drawing the blood sample, submitting it to the testing laboratory in the Maine Department of Agricultural, which is a part of the five disease control program of the state.

Q. Do these crews go to all the farms? A. Those crews — that particular crew would go to all the breeder farms

during the year and to all the farms that were raising replacement pullets. And they might go to some of the broiler farms if we had to vaccinate.

Q. As an ordinary course of conduct of the business, do you vaccinate all poultry? A. If the condition varrants it, yes. Right now, yes.

Q. And for that reason you have your own crew that does vaccination, is that what you said? A. Yes. Well, routine vaccinations, yes. If we had to vaccinate 3-1/2 million birds in a week, we'd have to hire some outside help.

Q. Does anyone do debeaking? A. Yes.

Q. Who does that? A. One of the farm crews and the hatchery.

Q. And they debeak all of your chickens, all Bayside's? [63] A. The chickens are either debeaked at the hatchery or on the farm.

Q. And for that purpose, you have a crew that does it? A. Yes.

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Q. With regard to the delivery of the grain, you deliver you said approximately how many times a week does an average farm get a delivery of grain, of feed? A. It would vary on some on the size of the bin that the farm has or bins, the age of the bird and when they are to be processed. We like to have bin capacity so feed is delivered once a week, a full truckload.

Q. What is actually the case? [64] A. Both. Large farms obviously would have bin space enough to handle a weeks supply of feed, yet they would have binage for more than one truckload. Small farmers a week's supply might be less than a truckload.

Q. Is it a fair statement to say that every farm receives a Bayside grain truck at least twice a week? A. Probably.



Q. Is it probable that many farmers see a Bayside truck more than once a week? A. A number of them would, yes.

Q. When a driver arrives at the farm, approximately how long is he there, on an average? A. It will depend on the size of the delivery, but the delivery time probably runs between 2-1/4 to 3 minutes per ton. So if it was a 15 ton load, he might be there up to 45 minutes.

Q. How many farms does an average driver reach a day? A. Well, last month we delivered 388 loads of feed, with six or seven truckdrivers. So that means if it were six truck drivers then that means it's something like 58 loads divided by 4, about 58 loads a week, so that means he's on three or four farms a day.

Q. Is it a five or a six day week? A. It's hard to answer. It depends on the weather, the number of birds you have and whether we had a problem in the feed mill and they couldn't produce feed. We try to have it a [65] five day week.

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[66] A. Bayside operates feed trucks that have a capacity of 14 to 22 or 25 tons. One is a tractor trailer unit. Two of them are tandem axle bulk feed carrying units which have aluminum bodies. One is a large tri-axle unit. These have one function. They are a body that has a conveying device on the bottom and some kind of unloading device, either an air pump or audit, and they basically can be used alone. They could be utilized to pick up some ingredients, if it were necessary.

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[67] Q. Why? A. You might have two types of birds on a farm. If you're raising capons, you could be sending capon feed and broiler feed.

Q. Would it be important for the driver to know which goes with which? A. Yes.

Q. What would happen if he made a mistake? A. Well, if one of the feeds happened to be a drug feed, it could get into the wrong birds, for instance, if it were on a capon farm where we have capons and young birds that are broilers, he could put our medicinal feed in the broilers that were supposed to be taken off that farm tomorrow morning and they would carry drug residue.

Q. Is it the function of the driver to be present when the unloading operation takes place? A. He has to be, yes.

Q. What happens when one bin is empty if the farmer isn't there? A. The farmer would probably leave a note for him or tell him which bin to put the feed into. On the capon farm, for instance, the driver would have to get the information from the farmer on which bin each type of feed should go into.

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[68] Q. When a flock, a group of birds, comes to maturity and there is grain left over, what happens? A. Normally it's removed from the farm and taken to another farm.

Q. How is that done? A. You have a unit that come pick up the feed, like a vacuum cleaner type deal and put it into a compartment of a truck, measure it and take it to another farm.

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Q. What kind of a truck does that? A. It has a specialized accumulator and air lock to move the feed in the opposite direction as when it was delivered.

Q. Is that one of the Bayside trucks? A. Yes.

Q. Is there any scale on the farms to measure how much grain comes in? A. No.

[69] Q. How does the farmer know how much grain is coming in? A. It's weighed, the truck.

Q. And who weighs it? A. The dispatcher or the driver.

Q. The driver then is told to deliver it to a farm, is that right? A. Yes.



Q. And how does the farmer know that he is getting that? A. Bayside has two ways, or three ways, of determining when the feed should be delivered. Is this what you want?

Q. No, what I asked is, how does the farmer know that the amount that the driver is told to deliver is actually what is being delivered? A. It's a weigh ticket that goes with the load.

Q. And that is given to the farmer? A. Yes.

Q. When the weigh ticket is given to the farmer, is anything else given to him? A. (No response.)

Q. Would it refresh your recollection to say that a sample of grain? A. Yes. Each load carries a feed sample with it.

Q. Why? A. So that we have a back up sample in case we have a problem with the flock or the feed, and the farmer has a sample [70] of the delivery.

Q. So the driver hands him not only the weighing ticket but the sample of what he has given him? A. (Witness nods)

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[72] Judge Davidson : Why don't we ask him what his testimony is?

Q. (By Mr. Levenson) What is your testimony as to how Bayside knows how much feed to deliver initially to the farmer? A. When the birds are placed on the farm, that's when they [73] are a day old, the hatchery determines from a precalculated schedule that is developed through experience with Bayside managers that it should require this amount of feed of a certain type, and it is so designated, basically on that schedule.

Q. The schedule marked Respondent's Exhibit 6? A. That schedule is a condensation of a daily feed intake program.

Q. And subsequent to that time? A. This schedule here is then used in conjuncture with an automatic calculation of how much feed should be required if the farmer doesn't have enough feed he has to call in or send a message in with the driver to the dispatcher that he is going to be short.

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[79] *Cross-Examination*

XQ. (By Mr. diCiero) Mr. Hutchins, do you hold any office with Poultry Processing? A. How do you mean?

XQ. Well, you say you are general manager for Bayside. Are you perhaps vice-president of Poultry Processing? A. No. I hold no title in Poultry Processing.

XQ. But you do have authority over the plant manager? A. Yes.

XQ. Bayside Enterprises is considered to be the parent corporation, isn't it? A. I believe so.

XQ. And the corporate officers for all three — two or three, whichever you wish, corporations — that is, Bayside, Penobscot and Poultry Processing is 153 High Street? A. Bayside and Poultry Processing?

XQ. Yes. A. Yes.

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[80] XQ. There is a mill at Thorndike, correct? A. Yes.

XQ. And that mill supplies all of the feed requirements for the birds which are ultimately processed by Poultry Processing, is that not correct? A. That mill does not supply all the feed requirements of [81] Bayside.

XQ. All right. What are the additional requirements? A. We purchase feed from other locations.

XQ. About how much do you purchase from other locations? A. About 15% — 12% to 15%, as high as 20%.

XQ. And does that feed go directly to the mill? Is that feed delivered to the mill? A. No, sir.



XQ. Where is that delivered? A. It is delivered to the farms.

XQ. And are you talking about deliveries from KLF directly to your breeder farms? A. And some meat farms.

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XQ. Your feed requirements for the breeder farms, which you say are owned by Bayside? A. Yes.

XQ. Your feed requirements there are serviced by KLF, is that [82] not correct? A. Yes.

XQ. And that is delivered specifically by KLF drivers, is that not correct? A. Some of it is and some of it could be dilivered by Bayside drivers.

XQ. What would the percentage be? A. I don't know at this point.

XQ. Well, is it not a fact that KLF drivers deliver most of if not all of the feed requirements for your breeder farms? A. They deliver the biggest majority of it.

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[83] XQ. Do you buy feeds from anyone else other than KLF? A. Not in recent years, no.

XQ. So that all goes to the breeder farms? A. How recently?

XQ. Let's go back a year. A. In 1972 we bought our feeds from Ralston Purina Company.

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[84] XQ. Just a moment. I haven't finished my question. How many tons totally does Penobscot Feed mill produce a year? A. Penobscot Feeds produce a year?

XQ. The Thorndike mill. A. Oh, approximately 120,000 tons.

XQ. 120,000 tons? Were you here when Mr. Fenwick testified today? A. Yes.

XQ. He testified that in an 18 month period they purchased — I'm sorry — A. He said about 40,000 tons.

XQ. I'm sorry, he put it in pounds and we're talking tons. Excuse me. You say that 120,000 tons of feed a year is produced by the Penobscot mill — rather, the Thorndike mill? [85] A. Somewhat in the neighborhood, yes.

XQ. And how much of that is sold, then, to third parties? A. About a third.

XQ. Some of that goes to Fort Halifax, we've heard that testimony. Who else buys feed from the Thorndike mills? A. I believe only Fort Halifax.

XQ. Port Halifax buys about a third of your output? A. Yes, sir.

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[90] XQ. When did the mill in Thorndike open, when was that mill? A. 1970 and '71, I believe.

XQ. And after the building of the mill in Thorndike Bayside then began to derive all of its — well, within the grounds we talked about — its feed requirements, derive its feed requirements from the Thorndike mill, is that correct? A. At the time it started to operate, it was purchasing a bigger proportion from KLF than it is now.

XQ. It is not down to the proportions that you testified to a short time ago? [91] A. Yes.

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XQ. Now what about MidCentral Fish Company that you mentioned earlier. Where do they fit into this? A. They operated the Thorndike mill for a period of time.

XQ. Was that a corporation owned by Bayside? A. I don't know.

XQ. Was that in the corporate family? A. I believe so.

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XQ. They operated the entire mill, didn't they? A. Yes, they did.

XQ. When was this? A. Well, if I recall correctly, it was in 1972, part of '73.

XQ. This was right after it was built? A. No.



XQ. No? Who built the mill? A. Pine Safe Beef Company.

[92] XQ. For their own use or for your use? A. They built it for a lease.

XQ. To whom did they lease it to? A. Ralston Purina Company.

XQ. And then how did Poultry Processing acquire ownership? A. Poultry Processing doesn't own the mill.

XQ. Who owns it? A. Pine Safe Beef.

XQ. And Poultry Processing merely leases it? A. That's correct.

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[97] Mr. DiCiero: On the record, Counsel for the Respondent and Counsel here have, I think, resolved this.

Apparently, as I understand, we have a stipulation which will satisfy and I will offer the stipulation as I understand it.

That up until May 1, 1974, Poultry Processing, Inc. operated the mill and owned all the feed. Of this, two thirds of the feed was sold to Bayside and one third was sold to Fort Halifax. After May 1, 1974, Bayside now purchases its own ingredients and these ingredients are delivered over to Poultry Processing, Inc. for milling, and for which there is a charge, charge back on this.

Poultry Processing, Inc., then in its own name purchases the remaining portion of feeds, which is then sold off to third parties including Fort Halifax.

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[98] Mr. Levenson: Your Honor, that is a stipulation we would agree to.

Mr. DiCiero: One further thing. My understanding is the purpose for this changeover was for purely corporate accounting purposes, is that correct, Mr. Levenson?

Mr. Levenson: I would stipulate that Bayside Enterprises is on a cash basis. Poultry Processing, Inc. is on an

accrual basis. I think one of the reasons for it is that, as I said, an accounting basis and it makes more sense that way.

Judge Davidson: I take it both before and since May 1, 1974, the method of delivery has been the same, that there is no change in terms of who delivered the feed?

Mr. Levenson: That is correct.

Judge Davidson: That stipulation is received.

* * *

XQ. (By Mr. diCiero) Now you testified, Mr. Hutchins, that there are 109 grower farms — 119 farms, is that correct? A. Yes.

XQ. And I believe they are all farms with which there is a contract similar to Respondent's Exhibit No. 1, is that correct? My question is, the 119 farms, are they all contract farms, if you understand what I mean? A. Yes. Yes, they are.

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[99] XQ. I think you testified earlier that there is a disease going around now, do they call it LT? A. Yes.

XQ. Is that the technical name for it? [100] A. Laryngotrachetis.

XQ. Now when there is a loss of birds, what actually has Bayside lost? A. When birds are lost?

XQ. Yes. A. Bayside loses the investment they have in the birds and the cost of sold items that have been delivered to that farm.

XQ. What would the value of a bird be? A. At what age?

XQ. You say 7½ to 9 weeks for a broiler. Let's say a disease develops in the 7th week, which would be almost a full grown bird? A. If it developed in a full grown bird today?

XQ. Yes. A. Probably $1.00.

XQ. It would be about $1.00. Now, what would be the normal weight for a so-called full grown bird? A. At eight weeks or so?



XQ. Yes. Well, we're talking about the same bird. A. About 3.8 to 4.4 pounds.

XQ. Between 3 to 4 pounds, right?

Now if the bird died in the seventh week, you say the company had about a dollar invested in it. What does a farmer make on a bird, full grown bird? A. It would vary on his production — average on a broiler [101] about 2-3/4¢ to 2-8/10¢ per pound.

XQ. So that is around 10¢ per bird? A. That is correct.

XQ. How many birds does— A. Well, that's not really correct because you're spreading it over the whole flock base.

XQ. Isn't that how you derive the $1.00 figure? A. Yes.

XQ. So if we are incorrect, if we are in error, we are in error on both sides? A. The grower would get a portion of the payment in most instances, even if that bird dies.

Q. What portion? A. Well, it's in the contract. It would be paid at the ratio of 1-22/100¢ and a little bit more per square foot for period of occupancy, plus he could be paid a bonus on a poundage.

XQ. All right, so if a full grown bird does—I know we're only talking about one bird—if a bird dies, the farmer loses some money, doesn't he? A. Only in relationship to what the average loss is in the growing operation.

XQ. I thought we were talking about disease and an abnormal situation that would take 1,000 birds at a time. That's an abnormal situation, wouldn't you call it, or is 1,000 birds a [102] small amount. I don't know. A. It depends on how big the flock is. If it's 50,000 birds, that's 2%.

XQ. All right. So let's take 1,000 birds out of a 50,000 flock. The farmer has a substantial investment in those 1,000 birds, doesn't he? A. At maturity.

XQ. Yes at maturity, yes. That's exactly what we're talking about, isn't it. So if a bird dies before he can

bring it to market or before it's transported down here to the processing plant, then he's lost a substantial amount of money, hasn't he? A. He would lose a minor portion of the investment, yes.

XQ. What do you mean a minor portion? A. Well, at the ratio of about 2-1/2 cents to about 30 cents or 25 cents, he has about 10%.

XQ. He's lost 10%, is that what you're saying? A. He has about 10% of the investment in the birds.

XQ. Well, if he loses 1,000 birds. If you place 50,000 birds with that farmer, isn't that how you figure it, place so many birds with a farmer? A. Yes.

XQ. And then at the end of 7-1/2 to 9 weeks you go by and you collect them and you count how many birds—you clean out a flock at a time, don't you? [103] A. Yes.

XQ. You don't take half a flock today and leave the rest for another two weeks or something, you clean out a flock at a time? A. Normally, yes.

XQ. So you count up how many chickens he's got left at the end of 7-1/2 to 9 weeks, whatever it is, and that's what he's paid on, isn't it? A. No. He's paid on the square footage that he has plus a bonus on the pounds of poultry he has produced.

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XQ. So if he's lost 1,000 birds that would decrease the total poundage, wouldn't it? [104] A. It depends on what his relationship of loss is to the rest of the growers.

XQ. Is that figured out each time? A. Yes, sir.

XQ. That's how you figure your bonuses? A. His payment would be in relationship to his production costs with the rest of the growers.

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[110] Judge Davidson: Let me ask you this, Mr. Hutchins. One thing that may be clear to Mr. diCiero but isn't clear to me. You have indicated that in computing the



bonus currently for farmers raising flocks that have been affected by the LT disease there is an alternative method of computing the bonus based upon the performance of the previous three flocks. Is that correct?

The Witness: That's the method we use, yes.

Judge Davidson: Is that a method that is provided by your agreement or is that something that you have agreed upon apart from the written contract with the farmers as a method of settling present problems?

The Witness: This is a method that we have devised to keep the farmer from being injured in an abnormal loss situation, which this LT is, which he may not have had any control over, so that he wouldn't lose his income producing capability. On the LT situation we have basically accepted the risk here, totally.

Judge Davidson: Under your contract, however, I take it under your written agreement with the farmer under which he took the flock in the first place, you had no obligation to [111] settle this way, is that correct?

The Witness: That's correct. The contract was written so he was in a normal operating situation with normal mortalities, then his income would be influenced by his capabilities.

Judge Davidson: Isn't included in what you are telling me the inference that but for settling for the alternative means of compensating the farmer, he would have sustained a rather substantial loss.

The Witness: Yes, he would have.

Mr. DiCiero: Thank you.

XQ. (By Mr. diCiero) Who is Mr. Merle Weymouth? A. He is an employee at the feed mill.

XQ. He is what? A. He is an employee at the feed mill.

XQ. Is he just an employee? A. Yes.

XQ. Does he not have a supervisory function of some sort? A. Yes.

XQ. As a matter of fact, he's in charge of the feed mill, isn't he? A. He works under the direction of Mr. Lord.

XQ. Mr. Lord is in charge of the feed mill? A. The whole feed operation, yes.

XQ. And Mr. Merle Weymouth is under him? [112] A. Yes.

XQ. And Mr. Merle Weymouth is an employee of what corporation, sir? A. Poultry Processing.

XQ. Is it not a matter of fact, Mr. Hutchins, that these drivers, these feed drivers, you say are employed by Bayside Enterprises, is it not a fact that they never come in contact with the chickens, the birds? A. Yes.

XQ. They report to work at the feed mill, isn't that correct? A. Yes.

XQ. And they are given their assignments to make deliveries to the contract farmers. And they make these deliveries and they, as you suggested either by an auger method or a blow in method, make the deliveries to the proper location on the farm, correct? A. Yes.

XQ. And is it not correct that sometimes they also pick up feed at various locations and deliver it back to the mill at Thorndike? A. What do you mean various locations?

XQ. Well, isn't it a fact that if a driver ends up with an empty bulk truck let's say in Rockland that he might pick up a load of grain at KLF down there and haul it back to Thorndike rather than dead head. Isn't that a fact? [113] A. I wouldn't think he'd haul mixed feed from—

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XQ. Would he haul anything from Rockland? A. Occasionally he might, yes.

XQ. Back to the mill at Thorndike? A. He might, but it would be the exception.

XQ. It would be the exception. What about going down to Gloucester, Massachusetts and picking up fish meal? Haven't Bayside drivers done that? A. Yes, they have.



XQ. And hauled that back to where? A. The ingredients that were purchased in Gloucester, the fish meal, were purchased by Bayside.

Judge Davidson: Where do they bring the fish meal?

The Witness: Fish meal is a storable item and fish that was bought in Gloucester was bought by Bayside and stored, at times, or sold at times to the feed mill operation. [114] Judge Davidson: Well, physically they take it back to the feed mill?

The Witness: Well, the majority of it was probably not hauled back to the feed mill, no. It was hauled to storage and used later.

XQ. (By Mr. diCiero) As a matter of fact, sometimes they go down in a tractor-trailer arrangement, don't they and bring it back that way— A. Yes.

XQ. They then come back—the driver might come back and drop the trailer or the rig off here in Belfast at the plant? A. He would probably not drop it at the plant, no.

XQ. Or at the storage facility? A. He would drop it someplace where it could be unloaded, yes.

XQ. And eventually that would arrive at the mill, somewhere? A. Yes.

XQ. And who would take it from the storage facility to the mill? A. Most of the stuff that was hauled from the storage facility to the mill was hauled by truck.

XQ. Whose truck? A. I guess I can't answer that honestly. I assume it's hauled by Bayside drivers.

XQ. By the way, I note in your listing of employees you scratched off the name Edward Hodgeton. Is that because [115] he is no longer employed there? A. Yes.

XQ. I am referring to Respondent's Exhibit 5? A. Yes.

XQ. Tell us, what job did Ed Hodgeton have when he was working? A. His job was a spare driver to haul ingredients like fish meal from storage.

XQ. Is that all he had to do? A. And he hauled some poultry meal.

XQ. What is poultry meal? A. It's a visceral by-product.

XQ. Is that what they call PBM? A. Yes.

XQ. Is that not the end residue of the viscerating process of the chickens? A. Yes.

XQ. And that's collected at the processing plant in Belfast? A. Yes.

XQ. And then is transported to the feed mill, is that not correct? A. Yes.

XQ. And that's done by Bayside drivers? A. It's done by various drivers.

XQ. Well, all feed mill drivers, if you will? A. No.

[116] XQ. Who else besides Hodgeton did it? A. Hodgeton has done it for a time and Poultry Processing people have done it.

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[124] *Redirect Examination*

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[125] Q. You mentioned the fact that if you were a farmer, you would want to be there when the delivery occurs, whether it's night or day because it influences his payment. A. Yes.

Q. Would you explain what you mean by that? A. Well, the bonus system is based on production cost and feed represents somewhere between 60% and 70% of the input in that. So since it represents such a big part of it, I guess I would want to check and see I got the feed I was supposed to, and if the bins were full.

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[127] Q. (By Mr. Levenson) Mention has been made of KLF. Is KLF a farm cooperative? A. Yes. It's a farmer owned cooperative.



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[128] *Recross-Examination*

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[132] XQ. (By Mr. diCiero) Is that correct? Has Mr. Hodge, an independent contractor, has he not made some delivery of feed to contract growers for Bayside since December, 1973? A. Yes, he and other people would make deliveries when we have an equipment problem, since we only have three trucks.

XQ. You hire these on a need basis? A. When we have a breakdown we would utilize them. We have an option. We might utilize someone else, which we have.

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*Examination*

Q. (By Judge Davidson) . . .

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[133] Q. Now do you know what percentage of the chickens grown by Bayside went to Poultry Processing for processing? A. The exact percentage, no, but the majority.

Q. When you say majority, it is somewhere slightly in excess of 50% or— A. Slightly less than 100%.

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[135] Q. When discussing the drivers, you said they were responsible [136] for the sanitation of the truck and the sanitation practices on the farm. Would you tell me what you meant by that? A. Well, they could be the vehicles of transmission of communicable disease for poultry from the fact that they could track it on their feet or on their clothing and equipment. They are under directives to clean this equipment on the farms to try to eliminate as much chance of it as possible.

Q. Clean which equipment? A. Well, I'm not sure whether they scrub their feed pipe or not. And when they

are back at the plant, they are responsible for washing the running gear on the truck so there is less chance of transfer.

Q. By sanitation on the farms you mean— A. Only in relation to the feed delivery.

Q. Only in relation to their own equipment? A. Yes.

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[139] *Further Recross Examination*

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[140] XQ. He reports to you as well. Do you have supervisory management responsibility over the operations of Bayside Enterprises and the two aspects of the Poultry Processing Incorprated business, is that correct? A. Yes.

XQ. And you, in turn, report to— A. Mr. George Lewiston.

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[141] JOHN E. PHILIPS

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

Q. (By Mr. Levenson) Your name is— A. John E. Philips.

Q. And what is your position? A. Controller.

Q. You are controller for both Bayside Enterprises and Poultry Processing, Inc., is that right? A. Yes.

Q. Now, Bayside Enterprises—the testimony has been that Bayside Enterprises sells the chickens or the poultry to Poultry Processing, Inc. at the farms, is that correct? A. Yes.

Q. Now how do you handle that transaction? A. The flock records which report the cost of the items that go



into the flock, such as the contract payment and the feed [142] and the fule is accumulated on a flock sheet. These flock sheets are accumulated for the month and totalled, and this total plus a figure for administrative expenses, and a margin percentage is added to this cost, which then becomes, so to speak, the invoice wherein Bayside Enterprises invoices the poultry to Poultry Processing.

Q. Now Poultry Processing mills the grain, your testimony is Poultry Processing mills the grain that belongs to Bayside, is that correct, as of May 1? A. Yes. Poultry Processing mills the grain for—well, it does all of the grain milling.

Q. Now, how do you handle that transaction between Poultry Processing and Bayside? A. The milling of the grain is handled on the basis of a fixed cost per ton charge.

Q. So that you make a charge against Bayside? A. Correct.

Q. Now are there any other items like this with regard to charge off against Bayside or Poultry Processing? A. In each company we have certain warehouse or supply areas which have certain supply commodities and in some cases the use of which would be common to both companies. Now, for instance, there could be disinfectant at our warehouse purchased by Bayside Enterprises in the warehouse by them, and mainly used by them. In certain cases the processing plant or [143] Poultry Processing would need some of this, in which particular case we would invoice them so much of this. We have fuels, gasoline and diesel fuel. In some cases, some of these tank inventories are purchased by and owned by Poultry Processing. If these were used by Bayside vehicles, then this becomes part of our fuel allocation wherein this is charged over.

Correspondingly, it is possible that some of Poultry Processing's vehicles could be drawing fuel from Bayside's pump, in which case there would be an allocation over.

Q. Now is there a charge against Poultry Processing or Bayside for Mr. Hutchins's services? A. The allocation of the administrative people, so to speak, is done by the public accountant at year end. We go over the general standard of what the office has done for the year and whether it is consistent with previous years and so forth. He interprets what shall be the allocation, if any, and I don't know—I don't see it beyond that so I don't know.

Q. Am I correct in saying that the basis of what you have testified there is a conscious attempt by you to separate the expenses of the one against the other? A. Yes.

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[145] *Cross-Examination*

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[147] XQ. Now in any of these transactions involving the transfer or the sale of chickens to Poultry Processing, does any money actually change hands? A. Yes.

XQ. How is that handled? A. By writing checks.

XQ. By writing checks for the transfer of funds from one checking account to the other? A. Well, you call it transferring. In a sense, to me it's two corporations. You have two cash receipts books, two cash disbursement books. Through disbursements here you're writing the check to, let's say if this was Poultry Processing, you're writing a check to Bayside Enterprises Corp. Correspondingly, the clerk handling cash receipts at Bayside Enterprise would handle it like any normal check.

XQ. Are they both signed by the same person? Who signs the Poultry Processing check? A. Who signs them? The check signers are myself, Clayton Downer, Herbert Hutchins, Bernard Lewis, George Lewis and David Lewis.

XQ. Who are the check signers for Bayside Enterprises? A. They are the same people.



XQ. And all of these corporations, I believe you testied, are under the control of the Lewis', is that correct? I can go down through all of them: Bayside, Poultry Processing, [148] and so forth? A. Yes.

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XQ. Are you aware of a checking account open in the name of Penobscot Poultry Company? A. Penobscot Poultry Company is a trading name for Poultry Processing, Inc. Poultry Processing, Inc. trades as Penobscot Poultry Company.

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[151] *Redirect Examination*

Q. (By Mr. Levenson) Mr. Philips, you have testified about various corporations and, as I understand it, Cummings Brothers is a feed wholesaler, is that right? A. To my knowledge.

Q. Cummings Cold Storage and Riverside Freezer are freezer companies? A. To my knowledge.

Q. What else was there? A. Coastal Fisheries.

Q. What are they? A. To me they are a fish processing plant.

Q. All of those companies have the Lewis's as president and treasurer?

Judge Davidson: Well, I'm not clear, and I'm not even sure if it's necessary, but did you indicate they were separate corporations or that they were operating divisions of Poultry Processing?

Mr. Levenson: I stand correct. He did say that, and instead of using the word "corporations", I should have used the word "divisions."

[152] Judge Davidson: Is that what they are?

The Witness: These are divisions of Poultry Processing, Inc.

Q. (By Mr. Levenson) So they do all of these different things that you have specified? A. Yes.

Q. And they all have Bernie Lewis as president and David Lewis as treasurer? A. To my knowledge, yes.

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[153] ROBERT DESROSIERS

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

[154] *Direct Examination*

Q. (By Mr. Levenson) Mr. Desrosiers, would you tell us your full name, address, and what the nature of your job is? A. My name is Robert J. Desrosiers. I live in Hope, Maine. I am employed by Bayside Enterprises as a broiler department manager.

Q. Would you tell us what that job entails? A. It involves being in charge of growing poultry. From the standpoint of growing I mean poultry grown for the prime purpose of meat production. It involves the health of that poultry, and the scheduling of feed programs and so forth.

Q. In the course of your job performance, do you have occasion to communicate with the farmers, the contract farmers? A. For the most part yes, that's correct.

Q. And what is the manner of your communication? A. I function as the manager of what has been referred to as the service men or field supervisors. As the manager of that department, which is referred to as service department, I am in close relationship with the growers, and the scheduling of poultry onto those farms. I initiate the scheduling of feed programs onto those farms. I am in charge of the poultry health on those farms.

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[156] Q. I'm sorry to belabor this point, but would you tell us what type of requirements you require with regard to feed distribution, as far as sanitation goes with your drivers? A. I'd have to go back to the intent of the letter to begin with. First of all, we make an attempt to enlighten our growers as to the problems in regard to the spread of disease. The first paragraph would indicate how many breaks we've had, in what areas.

And then it goes on to outline what areas of sanitation procedure that we, as a company, have set out for our own people, which includes feed delivery truck drivers who carry out strict sanitation methods. "The truck under carriages will be sprayed between loads," in that very first letter.

Hopefully, if this isn't being done, it would be reported back to me from a grower who would or might observe it. And we would make sure the correct procedure is taken care of and it's done on the next trip.

Q. You ask the grower to report to you any violations in sanitation practices? A. Yes, in essence. In fact, I'm not sure but one of these letters—in one letter I did write and asked them to report to [157] me if these practices were not being carried out.

Q. Now mention was made in previous testimony about a sample of grain that gets distributed to the farmer with each delivery. Would you tell us what the exact function is with regard to sanitation, if it has any? A. Well, not in the area of sanitation. It would more likely be in the area of contamination. Should there be a contaminant in the feed, we would have that sample to fall back on in order to pinpoint the day in which the ingredient might have gotten into that particular day's feed.

In other words, we can go back and trace if we have a sample. There is also a follow up sample in the feed mill.

From the standpoint of sanitation, I would think it would function more in the area of contamination.

Q. Now with regard to the grain itself, much discussion has been made on the approximate ingredients of this certain amount of grain.

Q. Do you regard the grain itself as an agriculture product? A. Absolutely. It's a source of protein.

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[159] Q. Does the driver have any obligation to prevent any of the moldiness or wetness or mixing that you just spoke about? A. Yes. He has a lot of responsibility other than that of a driver. He gets onto the farm, for instance, and let's say it's snowing real hard or raining. When he goes up on the top to open the shute, to be certain the bins are empty, he will only open one at a time, as opposed to all of them on a good day.

Disease control, with regard to LT, for instance, might be another area. He wants to put his truck in a specific area, knowing full well that he can suck with his cyclone at the base of the truck, can actually suck the virus, should it be there, out of the buildings from the fan operations up through the truck and contaminate another farm from the interior of the truck.

They are guided in this area by the dispatcher and the mill supervisor.

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[160] Q. Why doesn't Bayside use Hodges on a regular basis rather than its own truck driver?

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A. Yes. With our own people delivering feed on our farms, we have control in regard to sanitation, where those vehicles have been prior to the delivery of feed they are now making. [161] Whereas, with Hodges, Dick Hodges I believe his name is, we do not have that control. We don't know where that vehicle has been prior to delivering one



of our loads and we feel in the area of sanitation control, disease control, rather, we just can't chance that situation.

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[162] Q. (By Mr. Levenson) How much of the time of the drivers is spent on the farm and how much on the road? A. I would have to estimate probably 50% based on the average mileage to and from our farms.

Q. You say 50% on the farms, 50% on the road, is that your testimony? A. Yes, I would estimate that.

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[164] *Cross-Examination*

XQ. (By Mr. diCiero) Mr. Desrosiers, it is your duty, then, you have direct contact with the contract farmers, isn't that right? A. Yes, sir.

XQ. Is it up to you to get new contract farmers as needed and evaluate the ones you have, and that sort of thing? A. Yes, sir.

XQ. Do you have anything to do with the hiring or the firing or the directing of the feed drivers? A. Not directly.

XQ. You don't give them any orders? You don't tell them where to deliver things? A. I do not.

XQ. I think your testimony was on Respondent's 6 and 7 that you give some general instructions on making sure that certain disease control measures are taken care of? [165] A. This would be through the supervision at the feed mill.

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[166] XQ. These feed drivers—strike that. Hodges, when he is being used as you explained why he is not—when he is being used, essentially does the same thing as the feed mill drivers do, doesn't he? A. Yes.

XQ. And that'll all he does, he delivers the feed grain? A. Yes.

XQ. And you say that the drivers spend about, you esti-

mate [167] that they spend about 50% of their time on the farm and 50% of the time on the road? A. That's correct.

XQ. Now somewhere in there they have to spend some time in the mill, don't they? A. Yes.

XQ. So the percentages probably would have to be cut down on both ends, wouldn't it? A. Probably.

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[168] *Redirect Examination*

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A. The driver has in each vehicle a foot pan that's like a 12 quart pail. He has a bottle of a base disinfectant. He has [169] a water bucket and a sprayer, which he uses in the function of his sanitation procedures.

Q. And that's in each truck? A. In each vehicle.

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[174] WILLIAM PLAMONDON

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

Q. (By Mr. Levenson) Would you please give your full name, address and your position? A. William Albert Plamondon, City Point, Belfast. And I am a dispatcher for Penobscot.

Q. Mr. Plamondon, is it a fair statement—how many feed drivers are there? A. There are six.

Q. And there are two shifts? A. Right.

Q. When do the shifts begin and end? A. Three to one and from one to usually nine or when the feed is finished delivering.



Q. You have to tell me, morning or afternoon? A. Three in the morning to one that afternoon. Then from one to nine o'clock that night.

Q. Does each driver regularly haul to the same farm? [175] A. No.

Q. What is the practice? A. If a driver comes in and if the farmer isn't out of feed or something, I give him this list and they go to that farm. They don't go to the same one all the time.

Q. Who is Mr. Weymouth? A. He is in the mill, supervisor.

Q. And what is his principal function? A. He is in charge of making sure that the feed is made.

Q. What is your principal function? A. I take care of the farms and make sure that the feed is delivered to the farms.

Q. In the course of your duties, do you ever have contact with Mr. Desrosiers? A. Right. He tells me if there is any change in the schedule or something comes up, he tells me. Like the servicemen, they tell me what to do, like medication or something like that. I am in touch with him most of the time.

Q. How many times a day do you get in touch? A. Exact amount I don't know, but at least 10 times, sometimes, or vice versa.

Q. Could you explain a little bit what the telephone conversations are about so we understand? A. If they don't pull a flock the night they're supposed to, he'll tell me that. They need a little bit more — and he [176] usually tells me the amount, how many he's going to pull on one floor, or vice versa. He'll tell me "deliver a ton" or something like that, whatever it is.

Q. When you say deliver, you are talking about feed? A. Right.

Q. Do you have contact with the hatchery? A. Right. The hatchery, they make what we call a placement sheet. It gives me a week's advance of what chicks are going in the following week. And I line it up, when they're supposed to get their feed, and then I take care of the schedule from there on what type of feed to deliver to them. And, like I says, if something happens I call the farmer and ask if he's ready or something like that.

Q. Do you tell the truck drivers which farms to go to? A. Right. Usually the slip does. We have slips and the name of the farmer is right on there, and they'll go to that farm.

Q. Do you make up the slips? A. Right.

Q. Besides the contact with the hatchery, do you have any contact with field supervisors? A. You mean servicemen?

Q. Right. A. If a flock is sick or something, they'll usually call me and tell me what kind of medication to put in. Or if there's [177] trouble or something, or mainly sick birds or something like that, he'll tell me what kind of feed to put in.

Q. Mr. Plamondon, were you a former truck driver yourself for Bayside? A. Right.

Q. Who loads the trucks, Mr. Plamondon? A. If I have the time, I load them, or the drivers will load them. And most of the drivers know where the bins are. On top of the slips I put the bin number. We get them in letters; A and B is a certain type of feed and so on.

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Q. Mr. Plamondon, do you have any function with regard to feed samples on the farms? I understand that there is a feed sample picked up by the truck driver? A. Right. Every day I take these samples on every type of feed that goes out of the mill. And the driver, of course, has a sample



for the farmer. And if there is something wrong with the feed or something happens, we have a sample to go back to.

Usually if something happens it takes a little while, so I have shelves downstairs where I have the samples saved for a [178] certain length of time with a date on it on when it was pulled out of that mill.

Mr. Levenson: I have nothing further.

*Cross-Examination*

XQ. (By Mr. diCiero) Mr. Plamondon, who is your supervisor? A. Herb.

XQ. Herb who? A. Herb Hutchins.

XQ. Herb Hutchins is your supervisor? A. Right.

QX. Is Herb Hutchins at the mill every day? A. No, not every day.

XQ. Who is your supervisor day-to-day? A. Day-to-day Merle Weymouth.

XQ. Merle Weymouth tells you what to do? A. No. Well, if something comes up like he wants to change or something, like on a truck or something, he does. But day to day work, I take care of it.

XQ. When the truck drivers—when I'm talking about truck drivers, you know who I'm talking about? A. Bayside.

XQ. The feed mill drivers? A. Right.

XQ. When they want some time off or they're not going to be in for some reason or other, looking for a vacation or something, [179] they check with Merle Weymouth, don't they? A. No. They check with me, sir.

XQ. And then you check with Merle Weymouth? A. No. Usually, on vacation or something, we have a chart and then I get their pay lined up and all, and I make the arrangements to take someone's place when they're on vacation.

XQ. Who do you make the arrangements with? A. With the drivers, with the other drivers or something like that. We run two shifts. Now an afternoon shift has a week off or vacation, usually that driver I ask them to come in at 7. Or sometimes he will run a long shift. It all depends on how much feed is going out that day.

XQ. So you have to check with Merle Weymouth first, don't you? A. No.

XQ. You don't check with Merle Weymouth? A. No.

XQ. You don't bother to find out how much, what orders or anything like that? A. You see, the way it's set up is I have a book and I have the farms, and I have a small filing cabinet. And we are on an automatic system, so I know exactly when that farmer should run out of feed. So I put him down on the following week, and I keep a record. That's the way I keep my records and I know what type of feed that farmer should get. And that's the way it's run.

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[182] XQ. Is it more usual that the driver loads the truck than you? A. If I'm busy, they usually load it, but if I have time like if we have to empty a bin or something, I help them, [183] because usually we like to get them out. What I do is I clean them out.

XQ. In other words, you bang on the sides to make sure the feed falls down? A. Right.

XQ. But most of the time, doesn't the driver himself go out and load the trucks? A. Like I said, right, sir.

XQ. Isn't that a fact, that's a majority of times, isn't it? A. It all depends. I can't say a majority of the time because I go out as much as I can. But, like I say, if I'm busy or if I'm figuring something and a truck comes in, I give the driver the slip and, like I says, the bins are marked and they load the truck.

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[185] A. One time we used to deliver our own farms, breeder. But we don't do that because KLF takes care of it now.

XQ. KLF takes care of the breeder farms now? A. Right. But, like I says, those are our own farms. We used to do it at one time. I don't know how long ago. It was quite awhile ago.

XQ. Insofar as the hatchery, the only contact that you have with the hatchery is for them to let you know how many chicks are going to be placed on farms, isn't that right? A. Right. Unless there is a change, they'll notify me they're going to take something off and put something else in its place, or something like that. But they give me, like I says, a weeks advance on what birds are going to be placed that week.

XQ. So you will know when to start deliveries to the contract farm? A. Right.

XQ. These drivers don't make any deliveries to the Hatcheries? A. No.

XQ. There's no feeding at the hatchery at all, is there? A. As soon as the bird is born, out it goes, and the feed is waiting for it at the farm.

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[186] *Redirect Examination*

Q. (By Mr. Levenson) Mr. Plamondon, do you have an individual office at the mill? A. Right.

Q. And does Mr. Weymouth have one? A. Yes, he does.

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[188] ROBERT DESROSIERS

was recalled as a witness by Judge Davidson on behalf of the Labor Board and, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

Q. (By Judge Davidson) I would like to show you what has been marked as Respondent's Exhibit 7 and ask you to look specifically at Paragraph C, with the letter C in front of it. Please read it to yourself.

Would you tell me now what that refers to? A. O.K. It refers to pick up crews that are part of the poultry processing group. In other words, when we have to pick up poultry to get it into the plant —

Q. That's the finished bird? A. That's the finished bird, ready for marketing. And what this refers to is the fact that these people are using the same precautions that have been discussed in regard to the truck drivers, scrubbing of the boots and they are wearing laundered coveralls. In other words, these coveralls are [189] laundered every day and the boots, for that matter, are laundered every day. They go right through a washer and a dryer system, rather than take the chance of them contaminating a farm from something we didn't know about the day before. These people are into coveralls and boots to eliminate chances of contamination.

Q. Do they also wash down their trucks and take precautions of that kind? A. In the case of the routine farm where there is no known Laryngotrachetis, that truck is sprayed every day before it leaves the plant, and it goes to dispatch unit and from the dispatch unit it goes to the farm without first being sprayed. However, in the case of a known place, the truck is broken down and washed, every coop is washed individually and they actually pinpoint the crews.

In other words, we've got people that separate flocks. That crew never goes near an LT flock. We call it Lt — it's easier than Laryngotrachetis.



Q. Where do those crews work, at the plant, or are they out at the farm? A. They generate out of the plant. They are called pick up crews.

Q. And they go from the plant to the farm? A. That's correct, but they don't work in the plant. They merely pick up poultry.

[190] Q. Are they Poultry Processing? A. I believe they are Poultry Processing.

Q. The procedure described in Paragraph C, is that a retained procedure that goes on all the time, or is it a special procedure? A. As you know, the letter was written in regard to the control of Laryngotrachetis. This was not a routine procedure. A portion of this, the washing of the boots, and using the foot pans is normal and routine. However, this is extraordinary circumstances.

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Mr. DiCiero: The stipulation that I offer is that the [191] roaster and broiler pick up crews described in Respondent's 7, paragraph C therein, are employees in the bargaining unit represented jointly by the Teamster Local 340 and the Amalgamated Butcher's Union Local 385.

Mr. Levenson: I would be agreeable to that if part of the stipulation is that you also agreed Mr. Desrosiers has a farm group and is therefore concerned with the health of the farm group and with running the farms.

Mr. DiCiero: Why do I have to stipulate to that? He has already testified to that?

Judge Davidson: I think that is clear from the exhibit itself.

Mr. Levenson: All right, to that extent it is clear.

Mr. DiCiero: You will stipulate that these pick up crews that we talked about in paragraph C are represented jointly in that bargaining unit?

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CLARENCE MCKENNY

was called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as [192] follows:

*Direct Examination*

Q. (By Mr. diCiero) Mr. McKenny, would you state your full name and address? A. Clarence William McKenny, R.F.D. 2, Thorndike, Maine.

Q. Mr. McKenny, were you formerly employed at the Thorndike mill at Penobscot feeds? A. Yes, I was.

Q. When did you stop working there? A. It was just a few days before Christmas. It was in December of '73.

Q. When did you start working at that location — you know what I'm talking about, the Thorndike Mill? A. I worked there about a year and a half, somewhere around May of '72.

Q. And who was your employer at that time? A. My employer?

Q. Yes, who was signing your checks? A. At that time it was Mid Central Fish.

Q. Now what were you doing there at that time? A. I was unloading cars out back, grain cars.

Q. Grain cars? A. Ingredients like gluten, fish meal, stuff like that.

Q. Now did there come a time while you were so employed that you had a conversation with Mr. Merle Weymouth about continued [193] employment? A. Right.

Q. Now about when did this take place? A. It was around July or August.

Q. Of '72?

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[198] Q. (By Mr. diCiero) When you became a driver, a feed mill driver, did you speak to anyone else other than Mr. Merle Weymouth about this job? A. No, I didn't.



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Q. What were you duties as a feed mill driver? A. When I first started, I was on the night shift and we would go in at one o'clock —

Q. That's one o'clock in the afternoon? A. Right. And we might work until eight o'clock, or we might [199] work until one o'clock in the morning. You never could tell. It would all depend on how much grain was left to haul.

And we'd go in, get the trucks, sometimes it was loaded before we got there, sometimes we'd have to load it. If we had to load it, we would drive underneath the scales and they have what they call a portable scale, it moves right back and forth under these bins. And Bill Plamondon would give us the slip, and we'd go out, put so much, like the bin would hold three ton, and we had five compartments on the truck. We'd put three ton in each one.

And after we got the scale filled out, we got a slip of paper. You'd run in there and you'd stamp it. It would stamp the weight down, then you'd put it in the truck. And after the truck was full, you'd go to the farm that was on the slip.

Q. That description that you have given us, is that a typical day? A. Right.

Q. What you would do in the mill? A. Right.

Q. How often did you load the truck and — strike that. Did anyone else ever load the truck for you? A. Yes, William Plamondon did.

Q. Can you tell us how often you loaded it and how often he loaded it? A. Well, I would say we would load it probably two thirds of [200] the time.

Q. Who did? A. Us drivers.

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Q. What would you do when you got to the farm? A. When you get to the farm, you knew where to go. If he had pipes hanging down the side of his building, that's where you had to blow the feed off. And most generally he had a little jar with a cover nailed on the wall. It had a slip on there telling how much he wanted there and how much he wanted there.

Q. You mean in which bin he wanted you to deliver it? A. Right. If he didn't have a slip there and he wasn't around, you put it in the bins to your own discretion.

Q. How long would it take you to deliver a load on a farm?

Judge Davidson: What do you mean by deliver? Does that include loading?

Q. (By Mr. diCiero) When I say deliver, I mean once you're on the farm — [201] A. Unloading time?

Q. Yes. A. It could be anywhere from half an hour to an hour.

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Q. When you did see him, did the farmer tell you how to unload the grain, the feed, rather? A. No, he didn't tell us how to. He asked if we'd put so much feed here or so much feed there, but he never told us how to do it.

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[202] Q. (By Mr. diCiero) Tell us, have you ever made any haulings with the trucks? A. Yes, I have.

Q. Tell us when, where and what? A. If I were going to Rockland, Thomaston, or anywhere in the locality, every so often they'd send me to K&L farms, Knox Lincoln farmers co-op to pick up a load of capon feed or breeder farm feed and bring it back and deliver it.

Q. To whom? A. Bayside's breeder farms or capon farms.

Q. The contract farms? A. Yes.



Q. Did you ever deliver any of this back to the mill, to the Thorndike mill? A. Yes, I've hauled ingredients back to the mill before.

Q. From KLF? A. I've hauled some from KLF and I've hauled some from DeCosta out in Camden, Maine, in Turner, Maine.

Q. What was that you hauled of DeCosta? A. DeCosta, I think it was either corn meal or it was alfalfa, and I'm pretty sure it was alfalfa.

[203] Q. Let's go back just a bit. How often did you haul feed from KLF to the breeder farms, to the capon contract farms? A. You might get a load maybe once a month, maybe twice a month.

Q. Is that usual for you, about once or twice a month? A. You could figure once a month.

Q. And this is from July of '72 when you started as a driver until December of '73? A. Yes.

Q. And how often did you make the deliveries? Did you haul from the KLF farms — KLF location in Rockland to the Thorndike mill? A. I think I did that once, maybe twice, but I think it was once.

Q. Now what about the alfalfa that you hauled from Turner, Maine from the deCosta? A. I did that just once.

Q. You did that once? A. Right.

Q. And how about — where did you haul that? A. To Thorndike.

Q. Was that a full load? A. As I recall, I think it was 15 tons.

Q. That's a full load, isn't it? A. Right.

[204] Q. That's five bins, three tons per bin? A. Right.

Q. Was that the same thing when you hauled from the KLF? A. Sometimes you might get a whole load, other times you might get a half load.

Q. Have you ever done any other hauling? A. Yes, like during the summer, this would be the last summer.

Q. 1973? A. I would leave the mill, go up to Belfast, pick up a tractor and trailer and go to Gloucester, Massachusetts for a load of fish meal. And that would be on a Friday night and we returned back on a Saturday before noon and drop off the trailer and the tractor and then go home.

Q. You'd drop it off at the storage area? A. Either the storage area or at the mill.

Q. Now the tractor-trailer that you drove, whose tractor-trailer was that? A. It belonged to Bayside.

Q. And what name was on the side? A. I think it was Bayside.

Q. Would you tell us where in Gloucester you went? A. Gloucester, Mass.

Q. Do you know the name of the company? A. Lippman Fish Meal, I think it was.

[205] Q. Lippman Marine Products? A. Yes, something like that.

Q. How often did you do that? A. I made probably six or seven trips down around the summer.

Q. During the period of 1973, the summer of '73? A. Right.

Q. That was a whole tractor-trailer load, was that a 40 foot trailer? A. Right, 20 tons.

Q. How were you assigned those trips? A. Massachusetts. Merle Weymouth asked us if we'd like to go for the extra time, and we'd say "sure". We needed the extra time.

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[207] LARRY MCAULEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:



*Direct Examination*

[208] Q. (By Mr. diCiero) Mr. McAuley, would you state your full name and address for the record? A. Larry McAuley, Fall River Avenue, Belfast, Maine.

Q. And by whom are you employed, Mr. McAuley? A. Bayside Enterprises.

Q. And what do you do for Bayside? A. Truck driver.

Q. Where are you employed? A. Thorndike.

Q. At the Thorndike mill? A. Right.

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[219] Q. Have you ever done any kind of work at all as an employee of Bayside on any of the farms? A. No.

Q. Did you ever catch any chickens? [220] A. No.

Q. Have you ever done any work in the plant, in the mill while you were an employee of Bayside? A. If we finished early one night, we might go down and clean a load up there.

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[223] Judge Davidson: You described your duties. I wonder if you could tell me about how much time — well, first, strike that. About how many farms do you make deliveries to in the course of a day?

The Witness: Three or four, sometimes more.

Judge Davidson: How many hours would you work a day in which you visited three or four farms?

The Witness: An average day probably around nine hours, sometimes more.

Judge Davidson: Could you tell me how that nine hours breaks down in terms of where you are? How much of the day, in other words, are you at the mill, how much are you on the road, how much are you at the farms?

The Witness: I'd be out at the farm probably anywhere from 45 to 50 minutes, maybe an hour.

Judge Davidson: Each farm?

The Witness: Yes.

Judge Davidson: So that would be perhaps somewhere between three and four hours a day on the farms?

The Witness: Yes, somewhere around there. It all depends. You might have trouble unloading or something like that, the truck.

[224] Judge Davidson: And the rest of the time how much is at the mill and how much is on the road?

The Witness: You're not at the mill too long if you don't have to wait to get loaded. If there's trucks in front of you, you have to wait awhile to get loaded, but not very often.

Judge Davidson: Do you have any motion on how many miles you drive each day?

The Witness: On the average, it's over 100 miles a day, probably 120, sometimes more and sometimes a little bit less.

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[225] CLARENCE MCKENNY

was recalled to the stand by and on behalf of the Charging Party and, having been first duly sworn, was examined and testified as follows:

*Direct Examination*

Q. (By Mr. Cohen) Mr. McKenny, are you working for Bayside at the present time? A. No, I'm not.

Q. When did you terminate your employment with Bayside? A. Last December.

Q. How did that come about? A. Merle Weymouth called me into his office and he said that because of the energy shortage, and they were going to let go one of the sucker trucks and the sucker truck is one they take to the farm, any feed that is left over after the birds are gone they suck back into the truck. And you take it to another farm; most generally you take it to another farm. And he



said he'd have to let me go because I was the youngest man on [226] the seniority which, at the time, I didn't think I was.

• • •

RESPONDENTS' EXHIBIT NO. 4

BAYSIDE ENTERPRISES, INC.

BROILER • ROASTER • CAPON
FEED SCHEDULE
Eff. June 3, 1974

| | | | | |
|---|---|---|---|---|
| BROILERS: | | | | |
| Starter WF-180 | .666 | lbs. | 0 – 2 wks. | Mash |
| Starter Robenz + 3 N. | 2.4 | lbs. | 2 – 5 wks. | Crumble |
| Broiler Ration Robenz + 3 N. | 3.7 | lbs. | 5 – 8 wks. | Pellets |
| Ration ZZB-10 | 1.5 | lbs. | 8 – 9 wks. | Pellets |
| ROASTERS: | | | | |
| Starter WF-180 | .666 | lbs. | 0 – 2 wks. | Mash |
| Starter Robenz | 3.4 | lbs. | 2 – 6 wks. | Crumble |
| Ration Robenz | 2.7 | lbs. | 6 – 8 wks. | Pellets |
| Ration ZZB-10 | 1.5 | lbs. | 8 – 9 wks. | Pellets |
| Finisher Robenz | 5.4 | lbs. | 9 – 12 wks. | Pellets |
| Ration ZZB-10 | 2.1 | lbs. | 12 – 13 wks. | Pellets |
| CAPONS (Illegible): | | | | |
| Starter WF-180 | .666 | lbs. | 0 – 2 wks. | Mash |
| KL S40K Amprol + 200 gm Aureo | | | 2 – 6 wks. | Mash |
| Bayside Capon Zoa Mix | | | 6 – 16 wks. | Pellets |
| Bayside Capon Finisher (Zoa)—3 wks. prior to mkt. | | | | Pellets |
| CAPONS (Illegible): | | | | |
| Starter WF-180 | .666 | lbs. | 0 – 2 wks. | Mash |
| Starter Robenz + 3 N. | 2.4 | lbs. | 2 – 5 wks. | Crumble |
| Bro. Ration Robenz + 3 N. | 3.7 | lbs. | 5 – 8 wks. (to withdr.) | Pellets |
| Ration ZZB-10 | 1.5 | lbs. | 8 – mkt. | Pellets |

RLD:bf
cc: HCH
RAK
R.L.
Dispatch – Feed Mill
Servicemen
R.E.

## RESPONDENTS' EXHIBIT NO. 5

### BAYSIDE ENTERPRISES, INC.

| | |
|---|---|
| General Manager | Herbert Hutchings |
| Breeder Dept Mgr | Richard Koski |
| Broiler Dept Mgr | Robert Desrosiers |
| Poultry Servicemen | Clair Lewis |
| | Henry Chalmers |
| | Merle Grass |
| | David Kinney |
| Office Clerical | Barbara Flood |
| | Minnie Raven |
| | Nannette Way |
| | Rebecca Trafton |
| Hatchery Manager | Robert Eldridge |
| Hatchery Foremen | James Fernald |
| | Albert McCormick |
| | Alton Reynolds, Jr. |
| Hatchery Clerical | Patsy Berry |

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### BAYSIDE ENTERPRISES, INC.

Farm Managers

| | |
|---|---|
| Dietrich Steinort | Lloyd Harriman |
| Leslie Bailey | George Manning |
| Ralph Brewster | Lilford Small |
| Ralph Hamm | Allan Smith |

Farm Employees

| | |
|---|---|
| Betty Hamm | Lucille Smith |
| Arthur Shute | Karen Steinort |

Farm Crews

Lewis Riley — Foreman Grading Crew
Dean Hustus — Asst. Foreman Grading Crew
Melroy Gibbs — Foreman Farm Crew
Joseph Roberts — Foreman Blood Testing



| | |
|---|---|
| Dale Hustus | Dennis Tripp |
| Edward Riley | Larry Tripp |
| Odber Tibbetts | |

Bulk Feed Delivery — Thorndike

Dispatcher

William Plamondon

Drivers

| | |
|---|---|
| Steven Brown | Larry McAuley |
| Joseph Harriman | Clyde Rolerson |
| Leroy Harriman | Winston Thomas |

Breeder Hatchery — Waldo

Manager

Leon Gallant

Employees

| | |
|---|---|
| Norma Eynon | |
| Jean Glover | Deane Wood |

Hatchery — Unity

Egg Processing

| | |
|---|---|
| Albert Curtis | Charles Hartley |
| Charles Curtis | Dale Hartley |
| Erving Curtis | Joseph Hartley |
| James Curtis | Wilfred Letourneau |
| Mark Curtis | Hillard Parsons |
| Lena Dakin | Venlon Vanchough |
| Emerson Doughty | Linda Ward |

Chick Processing

| | |
|---|---|
| Eva Ames | Donna Erskine |
| Helen Bacon | Sally Fernald |
| Linda Bartels | Doris Nickless |

CHICK PROCESSING (*Continued*)

Shirley Bumpus
Crystal Clark
Terry Constable
Jacqueline Day
Edith Parsons
Marilyn Pelkey
Lorene Pushor
Madeline Ward

MAINTENANCE

Dwight Furrow

DRIVERS

Egg Truck:
Blaine McCormick

Chick Truck:
Walter P. Roberts

HELPER

Henry Curtis

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RESPONDENT'S EXHIBIT NO. 6

BAYSIDE ENTERPRISES, INC.
153 HIGH STREET
BELFAST, MAINE 04915

December 14, 1973

Dear Bayside Grower:

In June of 1971 I wrote to inform you of a Laryngotracheitis (LT) break on one of our farms. Again today I write to inform you of a break in a cage operation in Carmel. Although we have no business contact with this operation we will consider the situation as though it were one of our farms. By taking steps in that direction, hopefully, we can be as successful in avoiding a crisis as we were in 1971.

Those of you who have been through this type of problem understand the situation and for those of you who have not been through it we will attempt to enlighten you.

This disease is caused by a virus which cost the Maine Poultry Industry millions of dollars during the last epidemic in the mid 1960's.



There is no medication to cure the disease. Only strict sanitation programs can serve as a preventive to keep this one case from becoming an epidemic. We have taken steps at a company level to ward off the possibility of this:

A.) All crew vehicles will be washed every day.
B.) Pullet separating crew will be in sanitized uniforms just prior to arriving on your farm.
C.) Feed delivery truck drivers will carry out strict sanitation methods and truck undercarriages will be sprayed between loads.
D.) All work crews will step up their sanitation procedures.
E.) All feed will be left on farms. Estimate your last feed order carefully.

Should Bayside have a single farm break the following steps will also be initiated:

A.) All live haul trucks will be sprayed daily.
B.) All weigh stations and feed loading areas will be washed daily.
C.) Service personnel will answer emergency calls only.

These things, along with your complete cooperation, are necessary. The following is to refresh your memory in the steps that should be taken at the farm level.

A.) Complete footpan management to be carried out BY ALL PERSONNEL — INCLUDING YOU. These footpans must be changed DAILY.
B.) Absolutely No VISITORS — and certainly do not visit.
C.) Equipment lending — DO NOT borrow or lend equipment (if necessary, notify your fieldman and he will advise you).
D.) Screen all openings immediately with 1" x 1" screening. Most of you have this now — please check — you may have one missing.

E.) Get rid of all outside "poultry" including waterfowl. There is no better vector of disease.
F.) Rodent control is a must.
G.) Do not leave dead poultry in grain rooms. Incinerate immediately.
H.) Dispose of litter properly.
I.) Do not allow litter or oil delivery people in your buildings.

We are asking you to check yourself in these above areas of greatest importance. If you see any signs of respiratory condition in your flock, call immediately. Don't wait.

Thank you for your future cooperation which I am certain will keep us all in a better competitive position.

(s) ROBERT L. DESROSIERS
ROBERT L. DESROSIERS
Broiler Department Manager

RLD/mr

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RESPONDENT'S EXHIBIT NO. 7

BAYSIDE ENTERPRISES, INC.
153 HIGH STREET
BELFAST, MAINE 04915

April 10, 1974

Dear Bayside Grower:

At the time of our last letter regarding Laryngotracheitis, there had been six flocks that had come down with the disease. We then went through a period of about 20 days without a break, and then "the roof came in".

We now have had twenty-five flocks break with the disease in Maine as of this date, of which nine have been in the last twelve days — a sign that our sanitation programs and safeguards have dwindled to some extent at the farm as well as inter-company and intra-company.

LET'S REVIEW BOTH SANITATION PROGRAMS:



A. Our Pullet crew is using coveralls and boots.
B. They are sanitizing their suburban and equipment every day.
C. The Roaster and Broiler pickup crews are washing their boots, and wearing laundered coveralls prior to entering your buildings.
D. Their equipment is also being washed each day.
E. Bayside Fieldmen are limiting their in-building calls to emergencies, or respiratory situations, etc.
F. Feed truck drivers are washing their boots upon entering and leaving your farm.
G. Before re-entering the feed mill the wheels of trucks are being sprayed with disinfectant.
H. A special program has been set up to handle known L.T. farms.

Should you know of any of the above programs not being adhered to, I would appreciate knowing about it.

Let me review the areas which you as a GROWER should be responsible for in order to control L.T.

A. *Footpans* — A MUST — changed daily, used by all individuals — (there should be a brush by the pan). To dip the soles of your shoes is not adequate; boots that allow you to step into the footpan and to brush off any mud or adhering material, is what is necessary. A clump of material on the sole or heel of your boot CANNOT BE SANITIZED.

B. *Traffic in your buildings* — should be limited to the caretaker. Under no circumstances should you allow a repairman in your buildings without his being dressed in clean coveralls and boots.

C. *Loaning equipment* — should be taboo. If it *is* necessary, be certain it is washed and disinfected properly.

D. Do not visit other poultry buildings.

We realize that going over these points may become a drag to the individuals who do, in fact, carry on a thorough sanitation program. However, for those people who are lax in any of the above mentioned areas, please take heed.

It has long been thought that Laryngotracheitis is airborne. However, in recent years that has been considered Hog Wash, and we consider that to be a fact. It must be carried on shoes, boots, clothing, equipment, trucks, and the like, an.d is airborne only to the point of moving with dust.

If we all carry on our business considering these methods of transmission, we can beat this thing.

I suggest we keep at it.

(s) ROBERT L. DESROSIERS
ROBERT L. DESROSIERS
Broiler Department Manager

RLD:bf

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[The Administrative Law Judge's Decision is omitted from this Appendix as it is printed on pages A-9 through A-22 of the Petition for Writ of Certiorari.]

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[TITLE OMITTED IN PRINTING]

## EMPLOYER'S EXCEPTIONS TO THE ADMINISTRATIVE JUDGE'S DECISION AND REQUEST FOR ORAL ARGUMENT

### I. *Statement of the Case*

BAYSIDE ENTERPRISES, INC. is a Maine corporation whose principal office is located in Belfast, Maine. It employs approximately 80 people (53) in various jobs all having to do with the raising of poultry. Bayside owns all of the stock of Poultry Processing, Inc. (144) another Maine corporation who employs approximately 400 people (53) in various jobs having to do with both the processing of poultry and the milling of the feed for poultry.



The Bayside operation grows broilers, roasters, and capons; produces hatching eggs from breeder flocks; and conducts a pedigree breeding operation. It also buys hatching eggs when it needs them and sells both breeding stock and hatching eggs to other poultry companies (30).

Almost all of Bayside's poultry is sold to Poultry Processing, Inc. (100) although some has been sold to Fort Halifax Packing Company, another processing plant, and some Canadian canneries in Nova Scotia and New Brunswick (31, 122).

There are two hatcheries — a pedigree hatchery and a commercial hatchery. The small breeder pedigree hatchery is located in the town of Waldo, 5 miles outside of Belfast (58). This breeder hatchery is connected with six primary breeding farms which breed and select the strains or lines of birds of the type that is used in the broiler or roaster production business (34). It is necessary for Bayside to employ a full-time geneticist, Richard Koski, who is General Manager of the Breeder Department. He, with another man, helps select the basic breeders with the traits desired. This primary breeder operation has gone on since 1948 when it was established by buying eggs or chicks with the essential strains from other breeders (35).

The commercial hatchery is located in Unity, about 28 miles west of Belfast (58). There are eleven farms connected with it that produce eggs from breeding stock. This commercial hatchery's only function is to take in eggs and hatch chickens (36).

Besides the six breeder farms and the eleven commercial egg farms, Bayside has a contracted relationship with 119 independent farmers (37) for the growing of broilers and roasters. (Bayside itself owns approximately seven farms (130, 30) all of which at the present time are being used for the parent-grandparent operation (133-4).

Generally the farmer's responsibility is to supply the poultry house and to feed and look after the birds (78) while Bayside furnishes the chicks, the feed, fuel, medicaments and vaccines (39). Bayside also does the debeaking either at the hatchery or on the farm (63) as well as the blood testing (62). The farmer is paid on the basis of a guarantee for square footage plus a bonus based on the pounds of poultry he has produced (103).

The Bayside Broiler Department Manager Robert Desrosiers is directly concerned with what happens on each farm (134). He is in charge of the whole growing of poultry for meat production, the health of the poultry and the scheduling of both feed and poultry onto the farms (154).

He is superior to four poultry servicemen employed by Bayside (134) to regularly check on the flocks of the various farmers and take care that the poltry is fed and free from disease (175-176) (40-41).

Bayside also has eight farm managers and four farm employees that work on company-owned farms. There is also a special farm crew that move and grade poultry, clean the poultry houses, do vaccination and blood testing work and some of the breeder selection work.

The large commercial hatchery at Unity has a 14 person egg processing crew and a 14 woman chick processing crew. (See Respondent's Exhibit 5) This hatchery has two types of vehicles connected with it — a refrigerated vehicle for transporting eggs and a heated vehicle for transporting chicks (58). Each has a truck driver.

Besides a few office clerical people and a few employees at the breeder hatchery, the only other employees of Bayside are the six truck drivers employed in the feed move operation that are the subject of this controversy and their supervisor-dispatcher, William Plamondon.



Poultry Processing, Inc., the subsidiary of Bayside Enterprises, Inc., is divided into two distinct operations each under a different trade name (33). First there is the processing plant at a separate location at the east end of Belfast (58) about 1/4 mile from the central office (54) with its own procurement trucking system (32) for bringing in the live poultry from the farms in coops on flatbeds and it has other drivers that deliver the processed poultry to locations outside the state in refrigerated units (56-57). This operation goes under the name of Penobscot Poultry Co. (32).

The second operation is the feed mill located at Thorndike, Maine, 22 miles west of Belfast (58). This goes under the trade name of Penobscot Feeds (32).

The testimony is that the processing plant has a set of offices in which the manager, Gilbert Knight, in addition to a Mr. Dow, the operations manager; a Mr. Black, the personnel manager; and two salesmen are located. There are also offices for the Federal Inspection Service (55). All of the non-exempt personnel in the processing plant are represented by the Meatcutters and the Teamsters under a joint certification (9, 191, 53).

The feed mill at Thorndike, operated by Poultry Processing, Inc., has only two customers. Of the 120,000 tons per year (84) Fort Halifax Poultry Co. takes 1/3 of the production. The other 2/3 goes to the farms of Bayside. The 1/3 that Fort Halifax receives, constitutes 100% of its broiler feed (20). The 2/3rds that Bayside gets from the mill amounts to 80% to 85% of its total feed requirements (81-82). The balance comes from Knox-Lincoln Farmers Co-op (KLF) and is mostly feed for Bayside's breeder farms (81, 82).

Up to May 1, 1974, Poultry Processing owned all the ingredients that went into the feed and sold the feed to both Bayside and Fort Halifax. After May 1, Bayside

began to purchase all of its own ingredients (94) and Poultry Processing milled it on a fixed cost per ton (142) and charged Bayside for the milling. However, Poultry Processing continues to buy the ingredients for Fort Halifax and sell the manufactured product to it (97).

Feed is a manufactured agricultural product (23, 157). It is the source of protein to the poultry (157). It is made up of 80% corn and soy (45) and has approximately 25 other ingredients such as drugs, vitamins, minerals, amino acids, trace minerals and a growth stimulator (43). Fort Halifax makes up its own specifications for the type feed it uses (24) and Bayside also dictates to the mill the type of feed formula it requires (45).

Mr. Desrosiers, The Broiler Department Manager, decides what formula will be fed to the birds (46) depending upon certain variables. There is different feed requirement depending upon the type of bird being raised (broiler, roaster, capon).

Feed is categorized according to its composition (mash, crumbles, and pellets). Mash is the composition fed without further physical change in a blend (47). Crumbles (42) are round pellets broken up into small parts by a cracking roll. Pellets are the result of putting the mash into a steam pressure die system called a pellet mill (47).

It is very important when birds are young that they get a starter feed that carries higher fortification as far as vitamins and trace minerals. The quality of ingredients make for a higher price diet (48). As the birds become older, the form and the composition of feed changes (49). For example, one type of feed is used from 0 to 2 weeks; another from 2 to 6 weeks; another from 6 to 9 weeks; and 5 days prior to slaughter, a different feed where no restricted component such as a narcincal is used (41,49).

The feed is very expensive. It was testified to that at



the time of the hearing it was costing $160.00 per to[illegible] (127).

Besides the specie and age of the bird, the amount of feed consumed by the bird is affected by the general health situation of the flock and the temperature (when it is hot they eat less; when cold they eat more) (43, 65).

Just as Fort Halifax does not have a feed mill today, in the past Poultry Processing, Inc. did not have one and operated from a bulk receiving station located in Belfast (89,222).

A Mr. Lord is the manager of the feed mill (111). His second in command is Merle Weymouth. Weymouth's job is to see that the feed is made (175). These two men work for Poultry Processing, Inc. In another office (186) is William Plamondon who is the Bayside dispatcher (174). His job is to make sure the feed is delivered to the farms (175). His immediate supervisor is Desrosiers who speaks to Plamondon at least 10 times a day (175) with regard to feed delivery. Plamondon also must be in constant contact with the hatchery. The hatchery gives him a chick placement sheet so that he can make up a feed schedule for the truck drivers so that they will know which farm to deliver the feed. Plamondon also must be in touch with either the farm servicemen or the farmers themselves in case they are short of feed (73). Plamondon must speak to Weymouth about the mill's disease control because of the possibility of transmission of disease through the feed (137).

Plamondon must speak to Weymouth about the mill's disease control because of the possibility of transmission of disease through the feed (137).

Plamondon who is a fomer truck driver himself (177) is in charge of lining up the pay of the 6 truck drivers, making up a vacation schedule, seeing the feed trucks are loaded, and directing the drivers where to go and what to take there

(177, 216). The drivers themselves recognize that Plamondon is their immediate supervisor (220).

The biggest problem in the poultry raising industry is disease (24). Two of the most prevalent in Maine are the protozoan disease—cocksidiosis—and the virus—laryngotracheitis (Lt) (50). Disease control is extremely important (126). A diseased flock could have a mortality rate of as high as 20% although more usual is around 2% (99).

As early as the breeder-hatchery, medicaments are administered if there is a disease problem (48). The mill keeps a pail of disinfectant for all employees and visitors to prevent the transmission of disease through the feed (137). The corporate policy is to keep everyone away from the flocks including the truck drivers (127, 112) since particularly LT is spread mechanically by tracking it on boots or tires or by wild fowl (52, 50).

The truck drivers are responsible for sanitation control of themselves and their equipment while on the farms to prevent the transmission of communicable disease from feet, clothing, or equipment (136). In each Bayside truck there is a 12-quart pail, a foot pan, a bottle of disinfectant, a water bucket, and a sprayer, all used in the sanitation procedure (168). A driver must wash his boots before getting out of the truck (163). When he leaves the farm, he must spray his tires (163) and scrub his boots (51). Back at the feed mill he must wash his running gear with disinfectant (51, 164).

Mr. Desrosiers testified that the reason he does not use an independent trucker like Hodges is because to do so would forfeit his control over sanitation procedures in knowing where the independent driver has been prior to visiting one of his farms and being able to oversee the activities of the drivers and their vehicles (160). *He said that he feels that you just "can't take the chance" in sanitation control* (161).



The testimony with regard to the practice in the poultry industry as it concerns the transportation of feed is not consistent. Fort Halifax which buys its feed from Penobscot Feeds does not have feed drivers but hires Richard Hodges, an independent trucker, to pick up and deliver its feed (20). Bayside delivers 85% of its own feed in its own trucks with its own drivers but has the balance delivered by the drivers employed by the Knox-Lincoln Farmers Co-op. In the past, however, and even sometimes today, Bayside drivers pick up the feed in Rockland and transport it to the farms (185, 82, 218). Bayside, unlike Fort Halifax today, used its own drivers even when it didn't have a feed mill (222, 89). Some fully independent growers who own their own poultry have their own feed trucks and send them to KLF for the feed instead of having it delivered by KLF (75-76). The choice of the method of transportation of feed varies.

Bayside owns four feed farms (63) with capacities of 14 to 25 tons (66). Each truck has several compartments so that different feeds or split loads can be delivered by the same driver (66). Each compartment holds about 3 tons (163). The trucks have a conveying device on the bottom and an unloading device—either an air pump or auger (66, 51).

The Bayside farms are mostly in Waldo County and all within a 12 to 15 miles average from the feed mill (53). Bayside has its own fuel pump for its trucks (143). The Bayside trucks all carry the logo "Bayside Enterprises, Inc." The Poultry Processing trucks all say "Penobscot Poultry Co." although they are registered to Poultry Processing (57).

The six Bayside drivers work in two shifts. Three from 3 a.m. to 1 p.m. while the other three work from 1 p.m. to 9 p.m. (174). A driver goes to three or four farms a day

(64) but not necessarily does he regularly haul to the same farms (175).

His time is divided roughly equally between driving on the road and unloading on the farms with a much smaller amount loading the feed at the mill (162, 167). The average farm receives a feed delivery once a week although some see a feed delivery more than once a week (63-64). The driver spends on the average from ½ to 1 hour on each farm (201).

While the Poultry Processing truck drivers are hired by a personnel man at Poultry Processing (57), the responsibility to hire a new truck driver for feed delivery for Bayside would fall on the Broiler Department Manager since that department is so vitally concerned with what happens on the farms (134). Poultry Processing drivers both haul the live poultry to the processing plant after picking it up at 9:30 p.m. for processing at 7 a.m. the next morning (55, 190) and also drive the processed birds to market (55). There is a driver named Smart who works for Poultry Processing whose only job is to transport certain animal by-products of the processing plant to the feed mill for inclusion in the formula (137). Fort Halifax Packing also sells feathers to the Penobscot Feeds (21, 117).

The routine of a Bayside driver after reporting to work at the feed mill (112) which is at a central location is to get his schedule (73) from the dispatcher, load his truck from the specified bin with the type of feed indicated on his delivery slip (177). (Sometimes the truck is already waiting for him preloaded (168). The feed is weighed on the scale at the mill (69). There is no scale on the farms to measure how much feed is coming in (48). Then the driver takes the weight ticket along with a feed sample to be left with the farmer (for the purpose of pinpointing the day of any possible contamination) (69, 157, 177) and drives to either one or two farms with his load (217).



After going through the sanitation procedure on the farm, the driver either asks the farmer if he has multiple bins where he wants the feed and how much in each, or finds a message left for him concerning this (67, 51). The driver then connects the equipment either by air delivery or by auger and the feed truck is unloaded at about 2½ to 3 minutes a ton (51). The driver must be present at the unloading to change compartments on the truck and see that there is no difficulty (67). When the unloading is finished, he presents the feed sample and the weight slip to the farmer, sometimes having coffee with him; disassembles the unloading equipment; washes his boots; gets back in his truck and leaves either for the mill or another farm (51).

The responsibility of the drivers to the farmer is extremely great. The evidence shows that the farmer has no way to check to see if he is getting the amount of feed that the weight slip the driver presents to him indicates. It is therefore a matter of trust between the driver and the farmer that the driver doesn't deliver the feed somewhere else (70). This is particularly important since the bonus system is based on production costs and feed represents 60-70% of input (125).

The Bayside driver fills the farmer's bins in his own discretion if the farmer is not around (200) and with the specific type of feed that that age and type of poultry demands (158). A mistake could ruin the whole flock (67).

The driver's responsibility for proper sanitation cannot be overemphasized. Besides the procedures already indicated the wrong placement of his truck near the poultry house can suck the virus out of that building through the truck and contaminate another farm from the interior of the truck (159).

The feed must be of a specific moisture content. If it is snowing or raining the driver must be careful to open one

bin at a time so as to prevent excess moisture (159). To prevent mold he must make sure that the old feed is at the bottom of the bin before he unloads new feed (158-159).

In addition there is a responsibility in the very driving of the truck onto the farm. The birds in the poultry house are very dense (1½ broilers per square foot; 1 roaster per square foot). Any undue or extraordinary light or noise could make the birds stampede which would have the effect of their piling into a corner and smothering. It is for this reason that the driver must drive the shiny metal feed truck in such a manner as to prevent a reflection into the windows of a poultry house (73-74). There is evidence that at least one of the drivers is also an independent contract grower (138).

The only other factual matter in the record that has not been fully commented on is the relationship between Bayside and Poultry Processing. As has been previously reported, Bayside is the farm company and is recognized as such by the U.S. Department of Agriculture (128) as well as being a member of the Knox-Lincoln Farmers' Cooperative which makes being in the business of farming one of the qualifications (75). Poultry Processing buys live birds from other suppliers besides Bayside although Bayside is the major source (56). Title passes at the growing farm (33) contrary to the Administrative Law Judges finding on page 4 line 2 of the decision.

There is a conscious attempt to separate the two corporations (143). The main office in Belfast is the point in which there is some crossover, but even here an allocation of expenses is made to reflect the true cost situation as to each (143).

For example, there are 12 in the accounting office; 2 on the clerical payroll of Bayside; 7 on the clerical payroll of Poultry Processing; and 3 who do joint work for each. These 3 are John Phillips, the controller of both corporations (141); an office manager and an accountant (152).



The only other man involved in both corporations is Herb Hutchins, to whom the plant managers of both Penobscot Poultry and Penobscot Feeds report (139) as well as the top Bayside personnel.

Money actually changes hands between Bayside and Poultry Processing by writing checks. There are two cash receipt books and two cash disbursement books. There are invoices between the two for various charges including the sale of the poultry (141), feed, fuel, and an administrative expense charge (14[illegible]). This type of arrangement is not uncommon (25).

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BAYSIDE ENTERPRISES, INC.
PENOBSCOT POULTRY COMPANY
POULTRY PROCESSING, INC.
BY (s) ALAN J. LEVENSON
ALAN J. LEVENSON

Portland, Maine
October, 1974

LEVENSON AND LEVENSON
187 Middle Street
Portland, Maine
*Attorneys for Respondent*

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[The Decision and Order of the National Labor Relations Board are omitted from this Appendix as they are printed on pages A-7 and A-8 of the Petition for a Writ of Certiorari.]

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[The Opinion of the United States Court of Appeals for the First Circuit is omitted from this Appendix as it is printed on pages A-1 through A-5 of the Petition for a Writ of Certiorari.]

[The Decree of the United States Court of Appeals for the First Circuit is omitted from this Appendix as it is printed on page A-6 of the Petition for a Writ of Certiorari.]